

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION TO AMEND A WATER USE PERMIT

APPLICATION NO. 3936D

Marecek Land & Cattle seeks to amend a portion of Water Use Permit No. 3936 to add places of use for agricultural purposes in McLennan and Falls counties, remove the five authorized diversion points, add three diversion reaches on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and authorize the use of the bed and banks of Castleman Creek to convey groundwater for subsequent diversion for agricultural purposes in McLennan and Falls counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Marecek Land & Cattle, LLC, 2966 Hacienda Wesley, Waco, Texas 76706, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Water Use Permit pursuant to Texas Water Code § 11.122 and Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.* Notice is being mailed to the interjacent water right holders of record pursuant to Title 30 TAC § 295.158(c) and to Texas Parks and Wildlife Department and the Public Interest Council pursuant to Title 30 TAC § 295.161.

A portion of Water Use Permit No. 3936 authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County.

The time priority of the right is August 30, 1982 and multiple special conditions apply.

The permit, as amended, includes a special condition limiting diversions of surface water from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.

Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

Groundwater will be discharged, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County, ZIP Code 76706.

Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties.

Assumption Warranty Deed with Vendor's Lien Document No. 2012039763, *Special Warranty Deed* Document No. 2021002242, *Special Warranty Deed* Document No. 2021002246, *Warranty Deed with Vendor Lien* Document No. 2021004053 in the Official Records of McLennan County and *Special Warranty Deed* No. 5810 in Falls County. Consent to irrigate the additional acreage was provided CTEX, LLC.

Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek and add three diversion reaches on the Brazos River, in McLennan and Falls counties.

The new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek in ZIP Code 76706.

Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W in ZIP Code 76706.

Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W in ZIP Code 76706.

Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W in ZIP Code 76685.

The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at:

https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by January 29, 2024. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by January 29, 2024. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by January 29, 2024.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 3936 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued: January 9, 2024

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A
WATER USE PERMIT

PERMIT NO. 3936D

TYPE §§ 11.122, 11.042

Permittee:	Marecek Land & Cattle, LLC	Address:	2966 Hacienda Wesley Waco, TX 76706-7468
Filed:	July 1, 2021	Granted:	
Purpose:	Agricultural	Counties:	McLennan and Falls
Watercourse:	Unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, a portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County; and

WHEREAS, the time priority of the right is August 30, 1982 and multiple special conditions apply; and

WHEREAS, the permit, as amended, includes a special condition limiting diversions of surface water from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage; and

WHEREAS, Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties; and

WHEREAS, groundwater will be discharged, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude

97.051323° W, in McLennan County; and

WHEREAS, Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties; and

WHEREAS, ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763, *Special Warranty Deed* Document No. 2021002242, *Special Warranty Deed* Document No. 2021002246, *Warranty Deed with Vendor Lien* Document No. 2021004053 in the Official Records of McLennan County and *Special Warranty Deed* No. 5810 in Falls County. Consent to irrigate the additional acreage was provided CTEX, LLC; and

WHEREAS, Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and add three diversion reaches on the Brazos River in McLennan and Falls counties; and

WHEREAS, the new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek; and

WHEREAS, Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W; and

WHEREAS, Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W; and

WHEREAS, Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the existing streamflow restrictions that apply to diversions from the Brazos River are more protective of senior water rights because releases from upstream Brazos River Authority reservoirs cannot be used to satisfy those restrictions; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Water Use Permit No. 3936, designated Water Use Permit No. 3936D, is issued to Marecek Land & Cattle, LLC subject to the following terms and conditions:

1. USE

- A. In addition to the previous authorization, Permittee is authorized to divert and use its authorized 2,399.24 acre-feet of water per year for agricultural purposes to irrigate an additional 3,925.384 acres out of a 4,249.349-acre tract in McLennan and Falls counties.
- B. Permittee is authorized to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use for agricultural purposes in McLennan and Falls counties.
- C. Ownership of the additional land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763, *Special Warranty Deed* Document No. 2021002242, *Special Warranty Deed* Document No. 2021002246, *Warranty Deed with Vendor Lien* Document No. 2021004053 in the Official Records of McLennan County and *Special Warranty Deed* No. 5810 in Falls County. Consent to irrigate the additional acreage was provided CTEX, LLC.

2. DISCHARGE

Permittee will discharge groundwater, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County.

3. DIVERSION

- A. In lieu of previous authorizations, Permittee is authorized to divert from locations as follows:
 - 1. Diversion Reach No. 1 is located on Castleman Creek with the upstream point being at Latitude 31.453100° N, Longitude 97.043013° W and the downstream point being at Latitude 31.449400° N, Longitude 97.037796° W.
 - 2. Diversion Reach No. 2 begins on Castleman Creek and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 3. Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 4. Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W.

5. Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W.

- B. Permittee is authorized to divert surface water, authorized by Certificate of Adjudication No. 12-3936 at a maximum combined diversion rate of 13.37 cfs (6,000 gpm).
- C. Permittee is authorized to divert groundwater conveyed via the bed & banks of Castleman Creek and the Brazos River at maximum combined diversion rate of 17.82 cfs (8,000 gpm).

4. PRIORITY

- A. The time priority for the 2,399.24 acre-feet of water is August 30, 1982.
- B. The groundwater authorized to be conveyed via the bed and banks of a State watercourse in this Permit does not have a priority date and is not subject to priority calls from senior water rights.

5. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions of surface water from the extension of Diversion Reach No. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 - Brazos River at Waco, TX, as set forth in Paragraphs 4.C. - 4.E. below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Draft Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

Cfs = cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Subsistence Flows

- D. Permittee shall not divert surface water from the extension of Diversion Reach No. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

- E. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water from the extension of Diversion Reach No. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

- F. Diversions of surface water from the Brazos River are limited to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.
- G. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
- H. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.
- I. Permittee shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- J. Permittee shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This water right is not appurtenant to five tracts of land owned by CTEX, LLC totaling 1,708.375-acres out of the 4,249.349-acres of land authorized by this amendment and being a 1,108.16-acre tract, a 318.755-acre tract, a 25-acre tract, a 175.210-acre tract and a 81.25-acre tract in McLennan and Falls counties.

This amendment is issued subject to all terms, conditions, and provisions contained in Water Use Permit No. 3936, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date Issued:

From: [Richard George](#)
To: [Joshua Schauer](#)
Cc: [Humberto Galvan](#); [Chris Kozlowski](#); [Corey Mullin](#); [mary marecek](#)
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts
Date: Saturday, December 23, 2023 11:35:46 AM

Mr. Schauer, I have reviewed the draft permit and notice, everything looks good and we have no further comments.

Thank you,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Tuesday, December 12, 2023 12:53 PM
To: Richard George [REDACTED]
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. George,

The missing revisions have been added to the drafts. Please review the attached drafts and provide comments by December 26, 2023.

Thanks,
Josh

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

From: Richard George <[REDACTED]>
Sent: Monday, December 4, 2023 4:37 PM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Thanks Mr. Schauer, I reviewed the draft revisions. On item 1, I see where it was revised on page 4

(item 4.F) but the other two sections (page 1 and also in the notice) were not revised. Also, item 7 was not changed.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Monday, December 04, 2023 9:42 AM
To: Richard George [REDACTED]
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. George,

Suggested revisions have been made to the attached drafts in accordance with the comments were provided on October 16, 2023.

TCEQ declines to make the requested change to Paragraph 5.J. because TCEQ's rules in [30 Texas Administrative Code Section 304.15](#) require that all diverters, including those that are transporting water, contact the Watermaster and submit a Declaration of Intent for the diversion.

Please review the drafts and provide comments by December 18, 2023.

Thanks,
Josh

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

From: Richard George <[REDACTED]>
Sent: Friday, December 1, 2023 2:03 PM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski [REDACTED]; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Schauer, any updates on the revised draft comments below for the Mareceks?

Thanks,
Richard

From: Richard George
Sent: Monday, November 06, 2023 10:30 AM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Shauer/Mr. Galvan, have you guys reviewed the comments on the revised draft below for the Mareceks?

Thank you,
Richard

From: Richard George
Sent: Monday, October 16, 2023 9:40 AM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Schauer, I have reviewed the Revised Draft and have the following comments:

1. Page 1 of the draft (red paragraph), page 4, item 4.F and in applicable sections of the Notice, regarding the special condition limiting diversions on the Brazos. We are requesting that something be added here to specify that this pertains only to surface water, and not the groundwater being conveyed in the Brazos River.
2. Page 2 (1.A), acre-feet should be 2,399.24
3. Page 4 (3.A), acre-feet should be 2,399.24
4. Page 4 (4.B & 4.D), strike “and” in both sections after the previously removed sections in red.
5. Page 5 of the draft, item J – we are requesting that this section be revised to specify that contacting the Brazos Watermaster is only required for surface water diversions, and not conveyed groundwater.
6. Page 5 of the draft, the appurtenance section after item J., we request that this section be reworded to say that, “This water right shall not be appurtenant to any new land being added in this amendment.” The way it currently reads, it says it shall not be appurtenant to the additional 4,249.349 acres which includes land that was already authorized in the permit—if it isn’t appurtenant to any of the 4,249.349 acres, that excludes all of the applicant’s property doesn’t it?

We just want the appurtenance to stay the same as it was prior to this amendment, no changes in that regard.

7. Page 2 of the Notice, where “and diverted,” was added, it now sounds like the groundwater will only be diverted from the groundwater discharge reach. We request that this section be re-worded to specify that diversion of the groundwater will be authorized on any of the downstream diversion reaches outlined in the permit.

8. Page 2 of the Notice, Diversion Reach 3 Longitude is incorrect.

Please let me know if you have any questions.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Tuesday, October 10, 2023 1:07 PM
To: Richard George [REDACTED]
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>
Subject: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

CAUTION: This email originated from outside of Enviro-Ag Engineering. Do not click links or open attachments unless you have verified the sender and know the content is safe.

Dear Mr. George:

Revised drafts of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached. Staff is requesting that you review the documents and provide comments by 10/24/2023.

Regards,

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

Disclaimer

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From: [Joshua Schauer](#)
To: "Richard George"
Cc: [Humberto Galvan](#); [Chris Kozlowski](#); [Corey Mullin](#); [mary marecek](#)
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts
Date: Tuesday, December 12, 2023 12:53:25 PM
Attachments: [Marecek Land & Cattle 12 3936D Draft Amendment 12.12.2023.pdf](#)
[Marecek Land & Cattle 3936D Draft Notice 12.12.2023.pdf](#)

Mr. George,

The missing revisions have been added to the drafts. Please review the attached drafts and provide comments by December 26, 2023.

Thanks,
Josh

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

From: Richard George [REDACTED]
Sent: Monday, December 4, 2023 4:37 PM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Thanks Mr. Schauer, I reviewed the draft revisions. On item 1, I see where it was revised on page 4 (item 4.F) but the other two sections (page 1 and also in the notice) were not revised. Also, item 7 was not changed.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Monday, December 04, 2023 9:42 AM
To: Richard George [REDACTED]
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]

Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. George,

Suggested revisions have been made to the attached drafts in accordance with the comments were provided on October 16, 2023.

TCEQ declines to make the requested change to Paragraph 5.J. because TCEQ's rules in [30 Texas Administrative Code Section 304.15](#) require that all diverters, including those that are transporting water, contact the Watermaster and submit a Declaration of Intent for the diversion.

Please review the drafts and provide comments by December 18, 2023.

Thanks,
Josh

*Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov*

From: Richard George [REDACTED]
Sent: Friday, December 1, 2023 2:03 PM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Schauer, any updates on the revised draft comments below for the Mareceks?

Thanks,
Richard

From: Richard George
Sent: Monday, November 06, 2023 10:30 AM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]>

Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Shauer/Mr. Galvan, have you guys reviewed the comments on the revised draft below for the Mareceks?

Thank you,
Richard

From: Richard George

Sent: Monday, October 16, 2023 9:40 AM

To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>

Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin <[REDACTED]>; mary marecek <[REDACTED]>

Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Schauer, I have reviewed the Revised Draft and have the following comments:

1. Page 1 of the draft (red paragraph), page 4, item 4.F and in applicable sections of the Notice, regarding the special condition limiting diversions on the Brazos. We are requesting that something be added here to specify that this pertains only to surface water, and not the groundwater being conveyed in the Brazos River.
2. Page 2 (1.A), acre-feet should be 2,399.24
3. Page 4 (3.A), acre-feet should be 2,399.24
4. Page 4 (4.B & 4.D), strike “and” in both sections after the previously removed sections in red.
5. Page 5 of the draft, item J – we are requesting that this section be revised to specify that contacting the Brazos Watermaster is only required for surface water diversions, and not conveyed groundwater.
6. Page 5 of the draft, the appurtenance section after item J., we request that this section be re-worded to say that, “This water right shall not be appurtenant to any new land being added in this amendment.” The way it currently reads, it says it shall not be appurtenant to the additional 4,249.349 acres which includes land that was already authorized in the permit—if it isn’t appurtenant to any of the 4,249.349 acres, that excludes all of the applicant’s property doesn’t it? We just want the appurtenance to stay the same as it was prior to this amendment, no changes in that regard.
7. Page 2 of the Notice, where “and diverted,” was added, it now sounds like the groundwater will only be diverted from the groundwater discharge reach. We request that this section be re-worded to specify that diversion of the groundwater will be authorized on any of the downstream diversion reaches outlined in the permit.
8. Page 2 of the Notice, Diversion Reach 3 Longitude is incorrect.

Please let me know if you have any questions.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Tuesday, October 10, 2023 1:07 PM
To: Richard George [REDACTED] >
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>
Subject: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

CAUTION: This email originated from outside of Enviro-Ag Engineering. Do not click links or open attachments unless you have verified the sender and know the content is safe.

Dear Mr. George:

Revised drafts of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached. Staff is requesting that you review the documents and provide comments by 10/24/2023.

Regards,

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A
WATER USE PERMIT

PERMIT NO. 3936D

TYPE §§ 11.122, 11.042

Permittee:	Marecek Land & Cattle, LLC	Address:	2966 Hacienda Wesley Waco, TX 76706-7468
Filed:	July 1, 2021	Granted:	
Purpose:	Agricultural	Counties:	McLennan and Falls
Watercourse:	Unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, a portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County; and

WHEREAS, the time priority of the right is August 30, 1982 and multiple special conditions apply; and

WHEREAS, the permit, as amended, includes a special condition limiting diversions of surface water from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage; and

WHEREAS, Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties; and

WHEREAS, groundwater will be discharged and-diverted, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002°

N, Longitude 97.051323° W, in McLennan County; and

WHEREAS, Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties; and

WHEREAS, ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763, *Special Warranty Deed Document No. 2021002242*, *Special Warranty Deed Document No. 2021002246*, *Warranty Deed with Vendor Lien Document No. 2021004053* in the Official Records of McLennan County and *Special Warranty Deed No. 5810 in Falls County*. Consent to irrigate the additional acreage was provided CTEX, LLC; and

WHEREAS, Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and add three diversion reaches on the Brazos River in McLennan and Falls counties; and

WHEREAS, the new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek; and

WHEREAS, Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W; and

WHEREAS, Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W; and

WHEREAS, Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the existing streamflow restrictions that apply to diversions from the Brazos River are more protective of senior water rights because releases from upstream Brazos River Authority reservoirs cannot be used to satisfy those restrictions; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Water Use Permit No. 3936, designated Water Use Permit No. 3936D, is issued to Marecek Land & Cattle, LLC subject to the following terms and conditions:

1. USE

- A. In addition to the previous authorization, Permittee is authorized to divert and use its authorized 2,399.24 acre-feet of water per year for agricultural purposes to irrigate an additional 3,925.384 acres out of a 4,249.349-acre tract in McLennan and Falls counties.
- B. Permittee is authorized to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use for agricultural purposes in McLennan and Falls counties.
- C. Ownership of the additional land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763, *Special Warranty Deed Document No. 2021002242*, *Special Warranty Deed Document No. 2021002246*, *Warranty Deed with Vendor Lien Document No. 2021004053* in the Official Records of McLennan County and *Special Warranty Deed No. 5810 in Falls County*. Consent to irrigate the additional acreage was provided CTEX, LLC.

2. DISCHARGE

Permittee will discharge groundwater, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County.

3. DIVERSION

- A. In lieu of previous authorizations, Permittee is authorized to divert from locations as follows:
 - 1. Diversion Reach No. 1 is located on Castleman Creek with the upstream point being at Latitude 31.453100° N, Longitude 97.043013° W and the downstream point being at Latitude 31.449400° N, Longitude 97.037796° W.
 - 2. Diversion Reach No. 2 begins on Castleman Creek and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 3. Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 4. Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W.

5. Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W.

- B. Permittee is authorized to divert surface water, authorized by Certificate of Adjudication No. 12-3936 at a maximum combined diversion rate of 13.37 cfs (6,000 gpm).
- C. Permittee is authorized to divert groundwater conveyed via the bed & banks of Castleman Creek and the Brazos River at maximum combined diversion rate of 17.82 cfs (8,000 gpm).

4. PRIORITY

- A. The time priority for the 2,399.24 acre-feet of water is August 30, 1982.
- B. The groundwater authorized to be conveyed via the bed and banks of a State watercourse in this Permit does not have a priority date and is not subject to priority calls from senior water rights.

5. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions of surface water from ~~and~~ the extension of Diversion Reach No. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 - Brazos River at Waco, TX, as set forth in Paragraphs 4.C. - 4.E. below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Draft Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

Cfs = cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Subsistence Flows

- D. Permittee shall not divert surface water from ~~and~~ the extension of Diversion Reach No. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

- E. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water from the extension of Diversion Reach No. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

- F. Diversions of surface water from the Brazos River are limited to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.
- G. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
- H. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.
- I. Permittee shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- J. Permittee shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This water right is not appurtenant to five tracts of land owned by CTEX, LLC totaling 1,708.375-acres out of the 4,249.349-acres of land authorized by this amendment and being a 1,108.16-acre tract, a 318.755-acre tract, a 25-acre tract, a 175.210-acre tract and a 81.25-acre tract—4,249.349-acre tract of land in McLennan and Falls counties authorized by this amendment.

This amendment is issued subject to all terms, conditions, and provisions contained in Water Use Permit No. 3936, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION TO AMEND A WATER USE PERMIT

APPLICATION NO. 3936D

Marecek Land & Cattle seeks to amend a portion of Water Use Permit No. 3936 to add places of use for agricultural purposes in McLennan and Falls counties, remove the five authorized diversion points, add three diversion reaches on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and authorize the use of the bed and banks of Castleman Creek to convey groundwater for subsequent diversion for agricultural purposes in McLennan and Falls counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Marecek Land & Cattle, LLC, 2966 Hacienda Wesley, Waco, Texas 76706, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Water Use Permit pursuant to Texas Water Code § 11.122 and Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.* Notice is being mailed to the interjacent water right holders of record pursuant to Title 30 TAC § 295.158(c) and to Texas Parks and Wildlife Department and the Public Interest Council pursuant to Title 30 TAC § 295.161.

A portion of Water Use Permit No. 3936 authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County.

The time priority of the right is August 30, 1982 and multiple special conditions apply.

The permit, as amended, includes a special condition limiting diversions of surface water from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.

Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

Groundwater will be discharged ~~and diverted~~, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County, ZIP Code 76706.

Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties.

Assumption Warranty Deed with Vendor's Lien Document No. 2012039763, *Special Warranty Deed Document No. 2021002242, Special Warranty Deed Document No. 2021002246, Warranty Deed with Vendor Lien Document No. 2021004053* in the Official Records of McLennan County and *Special Warranty Deed No. 5810 in Falls County*. Consent to irrigate the additional acreage was provided CTEX, LLC.

Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek and add three diversion reaches on the Brazos River, in McLennan and Falls counties.

The new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek in ZIP Code 76706.

Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W in ZIP Code 76706.

Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W in ZIP Code 76706.

Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W in ZIP Code 76685.

The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at:

https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by _____ 2023. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by _____ 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by _____ 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 3936 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued:

From: [Richard George](#)
To: [Joshua Schauer](#)
Cc: [Humberto Galvan](#); [Chris Kozlowski](#); [Corey Mullin](#); [mary marecek](#)
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts
Date: Monday, December 4, 2023 4:36:55 PM

Thanks Mr. Schauer, I reviewed the draft revisions. On item 1, I see where it was revised on page 4 (item 4.F) but the other two sections (page 1 and also in the notice) were not revised. Also, item 7 was not changed.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Monday, December 04, 2023 9:42 AM
To: Richard George [REDACTED] >
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED] mary marecek [REDACTED]
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. George,

Suggested revisions have been made to the attached drafts in accordance with the comments were provided on October 16, 2023.

TCEQ declines to make the requested change to Paragraph 5.J. because TCEQ's rules in [30 Texas Administrative Code Section 304.15](#) require that all diverters, including those that are transporting water, contact the Watermaster and submit a Declaration of Intent for the diversion.

Please review the drafts and provide comments by December 18, 2023.

Thanks,
Josh

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

From: Richard George [REDACTED]

Sent: Friday, December 1, 2023 2:03 PM

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Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek [REDACTED]

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Thanks,
Richard

From: Richard George

Sent: Monday, November 06, 2023 10:30 AM

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Thank you,
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Sent: Monday, October 16, 2023 9:40 AM

To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>

Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin <[REDACTED]>; mary marecek [REDACTED]

Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Schauer, I have reviewed the Revised Draft and have the following comments:

1. Page 1 of the draft (red paragraph), page 4, item 4.F and in applicable sections of the Notice, regarding the special condition limiting diversions on the Brazos. We are requesting that something be added here to specify that this pertains only to surface water, and not the groundwater being conveyed in the Brazos River.
2. Page 2 (1.A), acre-feet should be 2,399.24
3. Page 4 (3.A), acre-feet should be 2,399.24
4. Page 4 (4.B & 4.D), strike "and" in both sections after the previously removed sections in red.
5. Page 5 of the draft, item J – we are requesting that this section be revised to specify that contacting the Brazos Watermaster is only required for surface water diversions, and not conveyed

groundwater.

6. Page 5 of the draft, the appurtenance section after item J., we request that this section be re-worded to say that, "This water right shall not be appurtenant to any new land being added in this amendment." The way it currently reads, it says it shall not be appurtenant to the additional 4,249.349 acres which includes land that was already authorized in the permit—if it isn't appurtenant to any of the 4,249.349 acres, that excludes all of the applicant's property doesn't it? We just want the appurtenance to stay the same as it was prior to this amendment, no changes in that regard.

7. Page 2 of the Notice, where "and diverted," was added, it now sounds like the groundwater will only be diverted from the groundwater discharge reach. We request that this section be re-worded to specify that diversion of the groundwater will be authorized on any of the downstream diversion reaches outlined in the permit.

8. Page 2 of the Notice, Diversion Reach 3 Longitude is incorrect.

Please let me know if you have any questions.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>

Sent: Tuesday, October 10, 2023 1:07 PM

To: Richard George <[REDACTED]>

Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>

Subject: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

CAUTION: This email originated from outside of Enviro-Ag Engineering. Do not click links or open attachments unless you have verified the sender and know the content is safe.

Dear Mr. George:

Revised drafts of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached. Staff is requesting that you review the documents and provide comments by 10/24/2023.

Regards,

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

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From: [Joshua Schauer](#)
To: "Richard George"
Cc: [Humberto Galvan](#); [Chris Kozlowski](#); [Corey Mullin](#); [mary marecek](#)
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts
Date: Monday, December 4, 2023 9:42:02 AM
Attachments: [Marecek Land & Cattle 12 3936D Draft Amendment Public Notice 12.4.23.pdf](#)

Mr. George,

Suggested revisions have been made to the attached drafts in accordance with the comments were provided on October 16, 2023.

TCEQ declines to make the requested change to Paragraph 5.J. because TCEQ's rules in [30 Texas Administrative Code Section 304.15](#) require that all diverters, including those that are transporting water, contact the Watermaster and submit a Declaration of Intent for the diversion.

Please review the drafts and provide comments by December 18, 2023.

Thanks,
Josh

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

From: Richard George [REDACTED] >
Sent: Friday, December 1, 2023 2:03 PM
To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; [REDACTED]; mary marecek <[REDACTED]>
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Schauer, any updates on the revised draft comments below for the Mareceks?

Thanks,
Richard

From: Richard George
Sent: Monday, November 06, 2023 10:30 AM

To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>

Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek <[REDACTED]>

Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

Mr. Shauer/Mr. Galvan, have you guys reviewed the comments on the revised draft below for the Mareceks?

Thank you,
Richard

From: Richard George

Sent: Monday, October 16, 2023 9:40 AM

To: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>

Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>; Corey Mullin [REDACTED]; mary marecek <[REDACTED]>

Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

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Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Tuesday, October 10, 2023 1:07 PM
To: Richard George [REDACTED]
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>
Subject: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

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Dear Mr. George:

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Regards,

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A
WATER USE PERMIT

PERMIT NO. 3936D

TYPE §§ 11.122, 11.042

Permittee:	Marecek Land & Cattle, LLC	Address:	2966 Hacienda Wesley Waco, TX 76706-7468
Filed:	July 1, 2021	Granted:	
Purpose:	Agricultural	Counties:	McLennan and Falls
Watercourse:	Unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, a portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County; and

WHEREAS, the time priority of the right is August 30, 1982 and multiple special conditions apply; and

WHEREAS, the permit, as amended, includes a special condition limiting diversions from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage; and

WHEREAS, Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties; and

WHEREAS, groundwater will be discharged and diverted, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002°

N, Longitude 97.051323° W, in McLennan County; and

WHEREAS, Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties; and

WHEREAS, ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763, *Special Warranty Deed Document No. 2021002242*, *Special Warranty Deed Document No. 2021002246*, *Warranty Deed with Vendor Lien Document No. 2021004053* in the Official Records of McLennan County and *Special Warranty Deed No. 5810 in Falls County*. Consent to irrigate the additional acreage was provided CTEX, LLC; and

WHEREAS, Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and add three diversion reaches on the Brazos River in McLennan and Falls counties; and

WHEREAS, the new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek; and

WHEREAS, Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W; and

WHEREAS, Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W; and

WHEREAS, Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the existing streamflow restrictions that apply to diversions from the Brazos River are more protective of senior water rights because releases from upstream Brazos River Authority reservoirs cannot be used to satisfy those restrictions; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Water Use Permit No. 3936, designated Water Use Permit No. 3936D, is issued to Marecek Land & Cattle, LLC subject to the following terms and conditions:

1. USE

- A. In addition to the previous authorization, Permittee is authorized to divert and use its authorized 2,399.24 acre-feet of water per year for agricultural purposes to irrigate an additional 3,925.384 acres out of a 4,249.349-acre tract in McLennan and Falls counties.
- B. Permittee is authorized to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use for agricultural purposes in McLennan and Falls counties.
- C. Ownership of the additional land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763, *Special Warranty Deed Document No. 2021002242*, *Special Warranty Deed Document No. 2021002246*, *Warranty Deed with Vendor Lien Document No. 2021004053* in the Official Records of McLennan County and *Special Warranty Deed No. 5810 in Falls County*. Consent to irrigate the additional acreage was provided CTEX, LLC.

2. DISCHARGE

Permittee will discharge groundwater, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County.

3. DIVERSION

- A. In lieu of previous authorizations, Permittee is authorized to divert from locations as follows:
 - 1. Diversion Reach No. 1 is located on Castleman Creek with the upstream point being at Latitude 31.453100° N, Longitude 97.043013° W and the downstream point being at Latitude 31.449400° N, Longitude 97.037796° W.
 - 2. Diversion Reach No. 2 begins on Castleman Creek and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 3. Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 4. Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W.

5. Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W.

- B. Permittee is authorized to divert surface water, authorized by Certificate of Adjudication No. 12-3936 at a maximum combined diversion rate of 13.37 cfs (6,000 gpm).
- C. Permittee is authorized to divert groundwater conveyed via the bed & banks of Castleman Creek and the Brazos River at maximum combined diversion rate of 17.82 cfs (8,000 gpm).

4. PRIORITY

- A. The time priority for the 2,399.24 acre-feet of water is August 30, 1982.
- B. The groundwater authorized to be conveyed via the bed and banks of a State watercourse in this Permit does not have a priority date and is not subject to priority calls from senior water rights.

5. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions of surface water from ~~and~~ the extension of Diversion Reach No. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 - Brazos River at Waco, TX, as set forth in Paragraphs 4.C. - 4.E. below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Draft Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

Cfs = cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Subsistence Flows

- D. Permittee shall not divert surface water from ~~and~~ the extension of Diversion Reach No. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

- E. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water from the extension of Diversion Reach No. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

- F. Diversions of surface water from the Brazos River are limited to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.
- G. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
- H. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.
- I. Permittee shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- J. Permittee shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This water right is not appurtenant to five tracts of land owned by CTEX, LLC totaling 1,708.375-acres out of the 4,249.349-acres of land authorized by this amendment and being a 1,108.16-acre tract, a 318.755-acre tract, a 25-acre tract, a 175.210-acre tract and a 81.25-acre tract—4,249.349-acre tract of land in McLennan and Falls counties authorized by this amendment.

This amendment is issued subject to all terms, conditions, and provisions contained in Water Use Permit No. 3936, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION TO AMEND A WATER USE PERMIT

APPLICATION NO. 3936D

Marecek Land & Cattle seeks to amend a portion of Water Use Permit No. 3936 to add places of use for agricultural purposes in McLennan and Falls counties, remove the five authorized diversion points, add three diversion reaches on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and authorize the use of the bed and banks of Castleman Creek to convey groundwater for subsequent diversion for agricultural purposes in McLennan and Falls counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Marecek Land & Cattle, LLC, 2966 Hacienda Wesley, Waco, Texas 76706, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Water Use Permit pursuant to Texas Water Code § 11.122 and Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.* Notice is being mailed to the interjacent water right holders of record pursuant to Title 30 TAC § 295.158(c) and to Texas Parks and Wildlife Department and the Public Interest Council pursuant to Title 30 TAC § 295.161.

A portion of Water Use Permit No. 3936 authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County.

The time priority of the right is August 30, 1982 and multiple special conditions apply.

The permit, as amended, includes a special condition limiting diversions from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.

Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

Groundwater will be discharged and diverted, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County, ZIP Code 76706.

Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties.

Assumption Warranty Deed with Vendor's Lien Document No. 2012039763, *Special Warranty Deed Document No. 2021002242, Special Warranty Deed Document No. 2021002246, Warranty Deed with Vendor Lien Document No. 2021004053* in the Official Records of McLennan County and *Special Warranty Deed No. 5810 in Falls County.* Consent to irrigate the additional acreage was provided CTEX, LLC.

Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek and add three diversion reaches on the Brazos River, in McLennan and Falls counties.

The new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek in ZIP Code 76706.

Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W in ZIP Code 76706.

Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W in ZIP Code 76706.

Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W in ZIP Code 76685.

The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at:

https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by _____ 2023. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by _____ 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by _____ 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 3936 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued:

From: [Richard George](#)
To: [Joshua Schauer](#)
Cc: [Humberto Galvan](#); [Chris Kozlowski](#); [Corey Mullin](#); [mary marecek](#)
Subject: RE: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts
Date: Monday, October 16, 2023 9:39:57 AM

Mr. Schauer, I have reviewed the Revised Draft and have the following comments:

1. Page 1 of the draft (red paragraph), page 4, item 4.F and in applicable sections of the Notice, regarding the special condition limiting diversions on the Brazos. We are requesting that something be added here to specify that this pertains only to surface water, and not the groundwater being conveyed in the Brazos River.
2. Page 2 (1.A), acre-feet should be 2,399.24
3. Page 4 (3.A), acre-feet should be 2,399.24
4. Page 4 (4.B & 4.D), strike “and” in both sections after the previously removed sections in red.
5. Page 5 of the draft, item J – we are requesting that this section be revised to specify that contacting the Brazos Watermaster is only required for surface water diversions, and not conveyed groundwater.
6. Page 5 of the draft, the appurtenance section after item J., we request that this section be re-worded to say that, “This water right shall not be appurtenant to any new land being added in this amendment.” The way it currently reads, it says it shall not be appurtenant to the additional 4,249.349 acres which includes land that was already authorized in the permit—if it isn’t appurtenant to any of the 4,249.349 acres, that excludes all of the applicant’s property doesn’t it? We just want the appurtenance to stay the same as it was prior to this amendment, no changes in that regard.
7. Page 2 of the Notice, where “and diverted,” was added, it now sounds like the groundwater will only be diverted from the groundwater discharge reach. We request that this section be re-worded to specify that diversion of the groundwater will be authorized on any of the downstream diversion reaches outlined in the permit.
8. Page 2 of the Notice, Diversion Reach 3 Longitude is incorrect.

Please let me know if you have any questions.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Tuesday, October 10, 2023 1:07 PM
To: Richard George [REDACTED]
Cc: Humberto Galvan <Humberto.Galvan@tceq.texas.gov>; Chris Kozlowski <chris.kozlowski@tceq.texas.gov>
Subject: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts

CAUTION: This email originated from outside of Enviro-Ag Engineering. Do not click links or open attachments unless you have verified the sender and know the content is safe.

Dear Mr. George:

Revised drafts of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached. Staff is requesting that you review the documents and provide comments by 10/24/2023.

Regards,

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

Disclaimer

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From: [Joshua Schauer](#)
To: [Richard George](#)
Cc: [Humberto Galvan](#); [Chris Kozlowski](#)
Subject: Marecek Land & Cattle, LLC; 12-3936D Revised Drafts
Date: Tuesday, October 10, 2023 1:07:28 PM
Attachments: [Marecek Land & Cattle 12 3936D Drafts Revised 10.10.2023.pdf](#)

Dear Mr. George:

Revised drafts of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached. Staff is requesting that you review the documents and provide comments by 10/24/2023.

Regards,

Joshua Schauer
Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A
WATER USE PERMIT

PERMIT NO. 3936D

TYPE §§ 11.122, 11.042

Permittee:	Marecek Land & Cattle, LLC	Address:	2966 Hacienda Wesley Waco, TX 76706-7468
Filed:	July 1, 2021	Granted:	
Purpose:	Agricultural	Counties:	McLennan and Falls
Watercourse:	Unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, a portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County; and

WHEREAS, the time priority of the right is August 30, 1982 and multiple special conditions apply; and

WHEREAS, the permit, as amended, includes a special condition limiting diversions from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage; and

WHEREAS, Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties; and

WHEREAS, groundwater will be discharged and diverted, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County; and

WHEREAS, Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties; and

WHEREAS, ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763 in the Official Records of McLennan County and consent to irrigate the additional acreage was provided CTEX, LLC; and

WHEREAS, Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and add three diversion reaches on the Brazos River in McLennan and Falls counties; and

WHEREAS, the new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek; and

WHEREAS, Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W; and

WHEREAS, Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W; and

WHEREAS, Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the existing streamflow restrictions that apply to diversions from the Brazos River are more protective of senior water rights because releases from upstream Brazos River Authority reservoirs cannot be used to satisfy those restrictions; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Water Use Permit No. 3936, designated Water Use Permit No. 3936D, is issued to Marecek Land & Cattle, LLC subject to the following terms and conditions:

1. USE

- A. In addition to the previous authorization, Permittee is authorized to divert and use its authorized 2,399.4 acre-feet of water per year for agricultural purposes to irrigate

an additional 3,925.384 acres out of a 4,249.349-acre tract in McLennan and Falls counties.

- B. Permittee is authorized to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use for agricultural purposes in McLennan and Falls counties.
- C. Ownership of the additional land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763 in the Official Records of McLennan County and consent to irrigate the additional acreage was provided CTEX, LLC.

2. DISCHARGE

Permittee will discharge groundwater, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County.

3. DIVERSION

- A. In lieu of previous authorizations, Permittee is authorized to divert from locations as follows:
 - 1. Diversion Reach No. 1 is located on Castleman Creek with the upstream point being at Latitude 31.453100° N, Longitude 97.043013° W and the downstream point being at Latitude 31.449400° N, Longitude 97.037796° W.
 - 2. Diversion Reach No. 2 begins on Castleman Creek and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 3. Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
 - 4. Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W.
 - 5. Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W.
- B. Permittee is authorized to divert surface water, authorized by Certificate of Adjudication No. 12-3936 aA at a maximum combined diversion rate of 13.37 cfs (6,000 gpm).

- C. Permittee is authorized to divert groundwater conveyed via the bed & banks of Castleman Creek and the Brazos River at maximum combined diversion rate of 17.82 cfs (8,000 gpm).

3. PRIORITY

- A. The time priority for the 2,399.4 acre-feet of water is August 30, 1982.
- B. The groundwater authorized to be conveyed via the bed and banks of a State watercourse in this Permit does not have a priority date and is not subject to priority calls from senior water rights.

4. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions of surface water from ~~Diversions Reach No.s. 3, 4, and 5,~~ and the extension of Diversion Reach No. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 - Brazos River at Waco, TX, as set forth in Paragraphs 4.C. - 4.E. below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

Cfs = cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Subsistence Flows

- D. Permittee shall not divert surface water from ~~Diversions Reach Nos. 3, 4, and 5,~~ and the extension of Diversion Reach No. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

- E. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water from ~~Diversions Reach Nos. 3, 4, and 5,~~ and the extension of Diversion Reach No. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.
- F. Diversions from the Brazos River are limited to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River

Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.

- G. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
- H. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.
- I. ~~Permittee Owner~~ shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- J. ~~Permittee Owner~~ shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This water right is not appurtenant to the additional 4,249.349-acre tract of land in McLennan and Falls counties authorized by this amendment. ~~and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the Water Use Permit by the owners or seller at the time of the transaction.~~

This amendment is issued subject to all terms, conditions, and provisions contained in Water Use Permit No. 3936, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

~~Permittee Owner~~ agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION TO AMEND A WATER USE PERMIT

APPLICATION NO. 3936D

Marecek Land & Cattle seeks to amend a portion of Water Use Permit No. 3936 to add places of use for agricultural purposes in McLennan and Falls counties, remove the five authorized diversion points, add three diversion reaches on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and authorize the use of the bed and banks of Castleman Creek to convey groundwater for subsequent diversion for agricultural purposes in McLennan and Falls counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Marecek Land & Cattle, LLC, 2966 Hacienda Wesley, Waco, Texas 76706, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Water Use Permit pursuant to Texas Water Code § 11.122 and Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.* Notice is being mailed to the interjacent water right holders of record pursuant to Title 30 TAC § 295.158(c) and to Texas Parks and Wildlife Department and the Public Interest Council pursuant to Title 30 TAC § 295.161.

A portion of Water Use Permit No. 3936 authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County.

The time priority of the right is August 30, 1982 and multiple special conditions apply.

The permit, as amended, includes a special condition limiting diversions from the Brazos River to those times that streamflow at United States Geological Survey Gage No. 08096500, Brazos River at Waco, Texas equals or exceeds 320 cfs during the months of April through August and 80 cfs during the months of September through March, exclusive of any releases by the Brazos River Authority from upstream reservoirs to satisfy rights and contractual obligations downstream of the Waco gage.

Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

Groundwater will be discharged and diverted, at a maximum rate of 17.82 cfs (8,000 gpm), within a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County, ZIP Code 76706.

Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties.

Ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763 in the Official Records of McLennan County and consent to irrigate the additional acreage was provided CTEX, LLC.

Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek and add three diversion reaches on the Brazos River, in McLennan and Falls counties.

The new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W, on Castleman Creek in ZIP Code 76706.

Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.38094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W in ZIP Code 76706.

Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W in ZIP Code 76706.

Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W in ZIP Code 76685.

The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at:

https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by _____ 2023. A public meeting is intended for the

taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by _____ 2023. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by _____ 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 3936 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued:

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Joshua Schauer, Project Manager
Water Rights Permitting Team

Date: May 3, 2023

Through ~~K~~ ~~A~~ Kathy Alexander, Ph.D., Policy and Technical Analyst
Water Availability Division

From: Alisa Patterson, P.E., Section Hydrologist
Water Rights Permitting & Availability
Section

Subject: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981
Unnamed tributary of Castleman Creek, Castleman Creek and the
Brazos River, Brazos River Basin
McLennan and Falls counties

Water Availability Review

Application Summary

A portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle, LLC (Applicant) to divert 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm) for agricultural purposes to irrigate 2,349.26 acres of land out of a 2,498.12-acre tract in McLennan County.

Applicant requests to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, add three diversion reaches on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek, and add places of use for agricultural purposes in McLennan and Falls counties.

Applicant further requests authorization to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium aquifer, for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

The application was declared administratively complete on July 1, 2021.

Water Availability Review

Resource Protection Staff recommended that the application be subject to instream flow requirements. Specific instream flow requirements are included in the Resource Protection Staff's memorandum dated April 3, 2021.

The application does not request a new appropriation of water; therefore, a water availability analysis is not necessary. However, the requests to add diversion reaches and amend the upstream limit of a diversion reach must be reviewed to ensure that the requests do not affect other water rights.

The Water Rights Analysis Package (WRAP) simulates management of the water resources of a river basin. TCEQ uses WRAP in the evaluation of water right permit applications using priority-based water allocations. WRAP is a generalized simulation model for application to any river basin, and input datasets must be developed for the particular river basin of concern. The TCEQ developed water availability models (WAMs) for Texas river basins that include geographical information, water right information, naturalized flows, evaporation rates, and specific management assumptions. Hydrology staff operates WRAP to evaluate water rights applications to determine water availability and to ensure that senior water rights are protected.

Staff used the Full Authorization simulation of the Brazos WAM to evaluate impacts on other water rights as a result of adding three diversion reaches on the Brazos River and amending the upstream limit of diversion reach no. 2 on Castleman Creek. The period of record for the Brazos WAM is 1940 to 2018. The permit includes a Hale Clause requirement of 320 cfs (273,785 gpm) from April to August and 80 cfs (35,905 gpm) during the other months at USGS Gage No. 08096500, Brazos River at Waco, TX. The environmental flow requirements recommended by Resource Protection staff are also for USGS Gage No. 08096500, Brazos River at Waco, TX.

For modeling purposes, staff applied the Hale Clause requirement at a gage downstream of the application, USGS Gage No. 08098290, Brazos River near Highbank, TX. When evaluating the application, staff limited diversions to the monthly Hale Clause requirement. Upstream Brazos River Authority reservoir releases cannot be used to satisfy the Hale Clause requirements; therefore, the Hale Clause requirement is more restrictive than the recommended environmental flow requirements from Resource Protection Staff.

Staff modeled the application assuming diversion of the full 2,399.24 acre-feet of water from the requested diversion reaches. Staff compared the pre- and post-volume reliabilities of all water rights in the Brazos River Basin and found small negative impacts to two water rights with an average difference in volume reliability of 0.02 percent.

Regarding the request to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year for subsequent diversion and use, the application includes the information required in 30 Texas Administrative Code (TAC) 295.113. Staff reviewed the losses associated with the use of the bed and banks of Castleman Creek and the Brazos River and found the estimation of losses to be adequate.

In addition, the application is subject to the requirements and orders of the Brazos Watermaster. The Watermaster actively manages water rights on a daily basis and protects senior water rights in times of shortage. Therefore, existing water rights should not be affected by the application.

Conclusion

Staff can support granting the application provided the permit includes the following special conditions:

1. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of surface water diverted from the diversion reaches authorized in Paragraph 1. DIVERSION and maintain measurement records.
2. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
3. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.

Alisa Patterson

Alisa Patterson, P.E., Section Hydrologist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Joshua Schauer, Project Manager
Water Rights Permitting Team

Date: April 3, 2023

Through: Leslie Patterson, Team Leader 
Resource Protection Team

From: George Gable, Aquatic Scientist
Resource Protection Team

Subject: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981
Unnamed tributary of Castleman Creek, Castleman Creek and the
Brazos River, Brazos River Basin
McLennan and Falls counties

Environmental reviews of water right applications are conducted in accordance with applicable provisions of the Texas Water Code (TWC) and the administrative rules of the Texas Commission on Environmental Quality (TCEQ). The provisions applicable to environmental reviews can vary according to the type and the location of the authorization requested.

APPLICATION SUMMARY

A portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle, LLC (Applicant) to divert 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm) for agricultural purposes to irrigate 2,349.26 acres of land out of a 2,498.12-acre tract in McLennan County.

Applicant requests to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, add three diversion reaches on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek, and add places of use for agricultural purposes in McLennan and Fall counties.

Applicant further requests authorization to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium aquifer, for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

ENVIRONMENTAL ANALYSIS

Aquatic and Riparian Habitats: The unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River, perennial watercourses, are located in the Floodplains and Low Terraces of the Texas Blackland Prairies (Griffith et al. 2007).

The checklist for the Brazos River Basin identified 93 species of ichthyofauna occurring within the Middle Brazos-Lake Whitney and Lower Brazos-Little Brazos hydrologic units (United States Geologic Survey [USGS] codes 12060202 and 12070101) (Hendrickson and Cohen 2015). The chub shiner (*Notropis potteri*), Guadalupe bass (*Micropterus treculii*), Brazos heelsplitter (*Potamilus streckersoni*), and Texas fawnsfoot (*Truncilla macrodon*), high interest aquatic species, are known to occur in McLennan and Fall counties (TPWD 2015). This amendment is not expected to have an effect on any high-interest aquatic species, because Resource Protection Staff are recommending that diversions of surface water be subject to streamflow restrictions.

The Applicant has agreed to install screens on any new diversion structures in order to minimize entrainment and impingement of aquatic organisms. The Applicant's request is not expected to adversely impact aquatic and riparian habitats in the area.

The TCEQ regulates bed and banks authorizations to convey groundwater under the authority of TWC §11.042. That provision allows the commission to place special conditions in the authorization to "maintain instream uses and freshwater inflows to bays and estuaries." On February 12, 2014, the TCEQ adopted environmental flow standards for the Brazos River and its Associated Bay and Estuary System (Title 30 Texas Administrative Code (TAC) Chapter 298 Subchapter G). These environmental flow standards are considered adequate to support a sound ecological environment (Title 30 TAC § 298.460). The Applicant does not request a new appropriation of water or an amendment that increases the amount of water stored, taken, or diverted. Resource Protection staff do not recommend a streamflow restriction for the Applicant's request to use the bed and banks of Castleman Creek and the Brazos River to convey groundwater for subsequent diversion from diversion reaches nos. 2, 4, and 5. For diversion of surface water, Resource Protection staff recommend a streamflow restriction for the addition of three diversion reaches, diversion reaches nos. 3, 4, and 5, and extension of diversion reach no. 2. Resource Protection staff utilized the subsistence and base environmental flow standards (Title 30 TAC § 298.480) established at USGS Gage No. 08096500 – Brazos River near Waco, TX for the streamflow restriction as shown in Table 1.

Table 1. Environmental Flow Values at USGS Gage No. 08096500 – Brazos River near Waco, TX

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

cfs = cubic feet per second

The applicable base flow values depend on the season. Seasons are defined in Title 30 TAC §298.455 as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Staff recommend that diversions of surface water under this proposed amendment should be limited to comply with the applicable subsistence and base flow values. No streamflow restrictions are recommended for groundwater discharged and diverted by the Applicant under this requested amendment.

Recreational Uses: Brazos River (Segment 1242) has a designated primary contact recreation 1 use (TCEQ 2022a). Castleman Creek has a presumed primary contact recreation 1 use. The Applicant’s request should not adversely impact recreational uses.

Water Quality: Brazos River (Segment 1242) has designated high aquatic life and public water supply uses. Castleman Creek has a presumed high aquatic life use (TCEQ 2022a). The Brazos River from a point immediately upstream of the confluence of the Navasota River in Brazos/Grimes/Washington County to the low water dam forming Lake Brazos in McLennan County is identified in the Texas Integrated Report with a concern for screening levels of nitrate and chlorophyll-a (TCEQ 2022b).

The Applicant indicates groundwater from one well in the Brazos River Alluvium aquifer will be discharged into Castleman Creek and subsequently diverted from diversion reaches nos. 2, 4, and 5. Resource Protection staff have reviewed the Applicant’s groundwater quality information, and the groundwater to be used is of sufficient quality that it should not adversely impact water quality.

Freshwater Inflows: Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project is located more than 200 river miles from the Gulf of Mexico. The application does not request a new appropriation of water; therefore, the Applicant’s request should not have any impact to the Brazos River’s estuary system.

RECOMMENDATIONS

Resource Protection staff recommends the following Special Conditions be included in the proposed amendment, if granted:

1. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
2. Diversions of surface water from diversion reach nos. 3, 4, and 5, and the extension of diversion reach no. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 -Brazos River at Waco, TX, as set forth in Special Conditions 3-5 below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

cfs = cubic feet per second

3. Seasons are defined as follows: Winter (November through February), Spring (March through June), Summer (July through October).

Subsistence Flows

4. Permittee shall not divert surface water in diversion reach nos. 3, 4, and 5, and the extension of diversion reach no. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow in Special Condition 2. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

5. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water in diversion reach nos. 3, 4, and 5, and the extension of diversion reach no. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

LITERATURE CITED

Griffith GE, Bryce SA, Omernik JM, Rogers AC. 2007. Ecoregions of Texas - Project Report to Texas Commission on Environmental Quality. Reston (VA): U.S. Geological Survey. Report No.: AS-199. 125p.

Hendrickson DA, Cohen AE. 2015. Fishes of Texas Project Database [Internet]. [2023 January 23]; Version 2.0. Available from <http://www.fishesoftexas.org/home/> doi:10.17603/C3WC70

TCEQ. 2022a. Texas Surface Water Quality Standards §§307.1-307.10. Austin (TX): Texas Commission on Environmental Quality.

TCEQ. 2022b. Texas Integrated Report of Surface Water Quality §§307.1-307.10. Austin (TX): Texas Commission on Environmental Quality.

TPWD. 2015. TPWD County Lists of Texas Protected Species and Species of Greatest Conservation Need [Internet]. Austin (TX): McLennan and Falls Counties, revised January 4, 2023. [2023 January 23]. Available from <http://tpwd.texas.gov/gis/rtest/>.

George M Gable IV

George Gable, Aquatic Scientist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Joshua Schauer, Project Manager
Water rights Permitting Team

Date: April 3, 2023

Through: Leslie Patterson, Team Leader 
Resource Protection Team

From: Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team

Subject: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981
Unnamed tributary of Castleman Creek, Castleman Creek and the
Brazos River, Brazos River Basin
McLennan and Falls counties

APPLICATION SUMMARY

A portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle, LLC (Applicant) to divert 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm) for agricultural purposes to irrigate 2,349.26 acres of land out of a 2,498.12-acre tract in McLennan County.

Applicant requests to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, add three diversion reaches on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek, and add places of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Fall counties.

Applicant further requests authorization to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium aquifer, for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes to irrigate the same 3,925.384 acres of land in McLennan and Falls counties.

WATER CONSERVATION REVIEW

Pursuant to Title 30 Texas Administrative Code (TAC) §295.9(4), applications requesting to change the place of use require the submittal of a water conservation plan.

The water conservation plan for agricultural use was reviewed by Resource Protection staff and found to be administratively complete per 30 TAC §288.4.

The application is consistent with the 2021 Region G Water Plan and the 2022 State Water Plan because there is nothing in the water plans that conflicts with issuing this proposed permit.

RECOMMENDATIONS

Resource Protection staff have no recommendations regarding the proposed permit, if granted.



Kristin Wang, Senior Water Conservation Specialist

From: [Richard George](#)
To: [Joshua Schauer](#)
Cc: [Corey Mullin](#); [mary marecek](#)
Subject: RE: Marecek Land and Cattle; 3936D Drafts
Date: Tuesday, June 20, 2023 10:18:15 AM

Mr. Schauer, we have reviewed the Draft Permit for 3936 and had the following comments:

1. The first page of the Notice – paragraph 3 shows 2,399.4 acre-feet of water. The correct acre-feet is 2399.24
2. In the Draft, page 2, item 1.B. the word covey is used where it should say convey.
3. In the Draft, page 3, item 3.A.2, the upstream Longitude shows 97.051232. The correct Longitude is 97.060226 degrees W.
4. In the Draft, page 3, item 3.B. only lists the maximum diversion rate of 6,000 gpm for the permitted water. We are requesting to add an additional item stating that the maximum diversion rate for the 2,200 acre-feet of groundwater discharged into the watercourse will be 17.82 cfs (8,000 gpm).
5. In the Draft, page 4, the last sentence at the bottom of the page talks about appurtenance. The applicants do not wish to make the water right appurtenant to the new land being added for irrigation in this application. They wish to leave the water right appurtenant only to the land it was previously appurtenant to.

Please let me know if you have any questions.

Thanks,
Richard

From: Joshua Schauer <Joshua.Schauer@Tceq.Texas.Gov>
Sent: Tuesday, June 06, 2023 8:27 AM
To: Richard George [REDACTED]
Subject: Marecek Land and Cattle; 3936D Drafts

CAUTION: This email originated from outside of Enviro-Ag Engineering. Do not click links or open attachments unless you have verified the sender and know the content is safe.

Dear Mr. George,

Drafts, subject to revision, of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached. Please review the attached draft and provide comments by 6/6/23.

Regards,

Joshua Schauer

Project Manager
Water Rights Permitting Team, Water Availability Division
Texas Commission on Environmental Quality
512-239-1371 Joshua.Schauer@tceq.texas.gov

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John Niermann., *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 6, 2023

Mr. Richard George
Enviro-Ag Engineering, INC.
9855 FM 847
Dublin, TX 76446

VIA E-MAIL

RE: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981, RN105805055
Application No. 3936D to Amend Water Use Permit No. 3936
Texas Water Code § 11.122, Requiring Limited Mailed Notice
Unnamed tributary of Castleman Creek, Castleman Creek, and the Brazos River, Brazos
River Basin
McLennan and Falls counties

Dear Mr. George:

Drafts, subject to revision, of the public notice, proposed amendment to Water Use Permit No. 3936, and the related technical memoranda are attached.

Staff is recommending that the referenced application be granted in accordance with the attached drafts. Please review the drafts and contact me no later than June 20, 2023, with any comments or questions as the notice will be forwarded to the Office of the Chief Clerk for mailing after that date.

Please note this application requires a two-week comment period and once the comment period has closed, the proposed amendment to Water Use Permit No. 3936 may be issued as drafted given no hearing requests are received.

If you have any questions concerning this matter, please contact me via email at Joshua.Schauer@tceq.texas.gov or by telephone at (512) 239-1371.

Sincerely,

A handwritten signature in cursive script that reads "Joshua Schauer".

Joshua Schauer, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

Attachments

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION TO AMEND A WATER USE PERMIT

APPLICATION NO. 3936D

Marecek Land & Cattle seeks to amend a portion of Water Use Permit No. 3936 to add places of use for agricultural purposes in McLennan and Falls counties, remove the five authorized diversion points, add three diversion reaches on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and authorize the use of the bed and banks of Castleman Creek to convey groundwater for subsequent diversion for agricultural purposes in McLennan and Falls counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Marecek Land & Cattle, LLC, 2966 Hacienda Wesley, Waco, Texas 76706, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Water Use Permit pursuant to Texas Water Code § 11.122 and Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.* Notice is being mailed to the interjacent water right holders of record pursuant to Title 30 TAC § 295.158(c) and to Texas Parks and Wildlife Department and the Public Interest Council pursuant to Title 30 TAC § 295.161.

A portion of Water Use Permit No. 3936 authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.4 acre-feet of water per year from five diversion points on the Brazos River and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County.

The time priority of the right is August 30, 1982 and multiple special condition apply.

Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

Groundwater will be discharged, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County, ZIP Code 76706.

Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties.

Ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763 in the Official Records of McLennan County and consent to irrigate the additional acreage was provided CTEX, LLC.

Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek and add three diversion reaches on the Brazos River, in McLennan and Falls counties.

The new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W on Castleman Creek in ZIP Code 76706.

Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.38094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W in ZIP Code 76706.

Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W in ZIP Code 76706.

Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W in ZIP Code 76685.

The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by [redacted] 2023. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by [redacted] 2023. The Executive Director can consider an approval of the application unless a written request for a contested

case hearing is filed by 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 3936 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A
WATER USE PERMIT

PERMIT NO. 3936D

TYPE §§ 11.122, 11.042

Owner:	Marecek Land & Cattle, LLC	Address:	2966 Hacienda Wesley Waco, TX 76706-7468
Filed:	July 1, 2021	Granted:	
Purpose:	Agricultural	Counties:	McLennan and Falls
Watercourse:	Unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, a portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle (Permittee/Applicant) to divert and use not to exceed 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm), for agricultural purposes to irrigate 2,349.26 acres out of a 2,498.12-acre tract in McLennan County; and

WHEREAS, the time priority of the right is August 30, 1982 and multiple special condition apply; and

WHEREAS, Applicant seeks to amend its portion of the Permit to authorize the use of the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties; and

WHEREAS, groundwater will be discharged, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County; and

WHEREAS, Applicant also seeks to add a place of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Falls counties; and

WHEREAS, ownership of the land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763 in the Official Records of McLennan County and consent to irrigate the additional acreage was provided CTEX, LLC; and

WHEREAS, Applicant further seeks to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, amend the upstream limit of Diversion Reach No. 2 on Castleman Creek, and add three diversion reaches on the Brazos River in McLennan and Falls counties; and

WHEREAS, the new upstream point of Diversion Reach No. 2 is located at Latitude 31.436464° N, Longitude 97.060226° W on Castleman Creek; and

WHEREAS, Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W; and

WHEREAS, Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W; and

WHEREAS, Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Water Use Permit No. 3936, designated Water Use Permit No. 3936D, is issued to Marecek Land & Cattle, LLC subject to the following terms and conditions:

1. USE

- A. In addition to the previous authorization, Permittee is authorized to divert and use its authorized 2,399.4 acre-feet of water per year for agricultural purposes to irrigate an additional 3,925.384 acres out of a 4,249.349-acre tract in McLennan and Falls counties.
- B. Permittee is authorized to use the bed and banks of Castleman Creek and the Brazos River to Covey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium Aquifer for subsequent diversion and use for agricultural purposes in McLennan and Falls counties.
- C. Ownership of the additional land to be irrigated is evidenced by an *Assumption Warranty Deed with Vendor's Lien* Document No. 2012039763 in the Official Records

of McLennan County and consent to irrigate the additional acreage was provided CTEX, LLC.

2. DISCHARGE

Permittee will discharge groundwater, at a maximum rate of 17.82 cfs (8,000 gpm), into a reach on Castleman Creek with the upstream point being at Latitude 31.436464° N, Longitude 97.060226° W and the downstream point being at Latitude 31.444002° N, Longitude 97.051323° W, in McLennan County.

3. DIVERSION

A. In lieu of previous authorizations, Permittee is authorized to divert from locations as follows:

1. Diversion Reach No. 1 is located on Castleman Creek with the upstream point being at Latitude 31.453100° N, Longitude 97.043013° W and the downstream point being at Latitude 31.449400° N, Longitude 97.037796° W.
2. Diversion Reach No. 2 begins on Castleman Creek and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.436464° N, Longitude 97.051232° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
3. Diversion Reach No. 3 begins on the Brazos River and ends at the confluence of Castleman Creek and the Brazos River with the upstream point being at Latitude 31.466461° N, Longitude 97.038094° W and the downstream point being at Latitude 31.453593° N, Longitude 97.003332° W.
4. Diversion Reach No. 4 begins at the confluence of Castleman Creek and the Brazos River and ends on the Brazos River with the upstream point being at Latitude 31.453593° N, Longitude 97.003332° W and the downstream point being at Latitude 31.448725° N, Longitude 96.998245° W.
5. Diversion Reach No. 5 is located on the Brazos River with the upstream point being at Latitude 31.343231° N, Longitude 96.998507° W and the downstream point being at Latitude 31.337414° N, Longitude 97.000682° W.

B. At a maximum combined diversion rate of 13.37 cfs (6,000 gpm).

3. PRIORITY

A. The time priority for the 2,399.4 acre-feet of water is August 30, 1982.

B. The groundwater authorized to be conveyed via the bed and banks of a State watercourse in this Permit does not have a priority date and is not subject to priority calls from senior water rights.

4. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
- B. Diversions of surface water from Diversion Reach Nos. 3, 4, and 5, and the extension of Diversion Reach No. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 - Brazos River at Waco, TX, as set forth in Paragraphs 4.C. - 4.E. below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

Cfs = cubic feet per second

- C. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Subsistence Flows

- D. Permittee shall not divert surface water from Diversion Reach Nos. 3, 4, and 5, and the extension of Diversion Reach No. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

- E. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water from Diversion Reach Nos. 3, 4, and 5, and the extension of Diversion Reach No. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.
- F. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
- G. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.
- H. Owners shall allow representatives of the Brazos Watermaster reasonable access to the property to inspect the measuring device and records.
- I. Owners shall contact the Brazos Watermaster prior to diversion of water authorized by this amendment.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes,

unless otherwise specified, a proportionate amount of the Water Use Permit by the owners or seller at the time of the transaction.

This amendment is issued subject to all terms, conditions, and provisions contained in Water Use Permit No. 3936, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

Date Issued:

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Joshua Schauer, Project Manager
Water Rights Permitting Team

Date: April 3, 2023

Through: Leslie Patterson, Team Leader 
Resource Protection Team

From: George Gable, Aquatic Scientist
Resource Protection Team

Subject: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981
Unnamed tributary of Castleman Creek, Castleman Creek and the
Brazos River, Brazos River Basin
McLennan and Falls counties

Environmental reviews of water right applications are conducted in accordance with applicable provisions of the Texas Water Code (TWC) and the administrative rules of the Texas Commission on Environmental Quality (TCEQ). The provisions applicable to environmental reviews can vary according to the type and the location of the authorization requested.

APPLICATION SUMMARY

A portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle, LLC (Applicant) to divert 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm) for agricultural purposes to irrigate 2,349.26 acres of land out of a 2,498.12-acre tract in McLennan County.

Applicant requests to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, add three diversion reaches on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek, and add places of use for agricultural purposes in McLennan and Fall counties.

Applicant further requests authorization to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium aquifer, for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

ENVIRONMENTAL ANALYSIS

Aquatic and Riparian Habitats: The unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River, perennial watercourses, are located in the Floodplains and Low Terraces of the Texas Blackland Prairies (Griffith et al. 2007).

The checklist for the Brazos River Basin identified 93 species of ichthyofauna occurring within the Middle Brazos-Lake Whitney and Lower Brazos-Little Brazos hydrologic units (United States Geologic Survey [USGS] codes 12060202 and 12070101) (Hendrickson and Cohen 2015). The chub shiner (*Notropis potteri*), Guadalupe bass (*Micropterus treculii*), Brazos heelsplitter (*Potamilus streckersoni*), and Texas fawnsfoot (*Truncilla macrodon*), high interest aquatic species, are known to occur in McLennan and Fall counties (TPWD 2015). This amendment is not expected to have an effect on any high-interest aquatic species, because Resource Protection Staff are recommending that diversions of surface water be subject to streamflow restrictions.

The Applicant has agreed to install screens on any new diversion structures in order to minimize entrainment and impingement of aquatic organisms. The Applicant's request is not expected to adversely impact aquatic and riparian habitats in the area.

The TCEQ regulates bed and banks authorizations to convey groundwater under the authority of TWC §11.042. That provision allows the commission to place special conditions in the authorization to "maintain instream uses and freshwater inflows to bays and estuaries." On February 12, 2014, the TCEQ adopted environmental flow standards for the Brazos River and its Associated Bay and Estuary System (Title 30 Texas Administrative Code (TAC) Chapter 298 Subchapter G). These environmental flow standards are considered adequate to support a sound ecological environment (Title 30 TAC § 298.460). The Applicant does not request a new appropriation of water or an amendment that increases the amount of water stored, taken, or diverted. Resource Protection staff do not recommend a streamflow restriction for the Applicant's request to use the bed and banks of Castleman Creek and the Brazos River to convey groundwater for subsequent diversion from diversion reaches nos. 2, 4, and 5. For diversion of surface water, Resource Protection staff recommend a streamflow restriction for the addition of three diversion reaches, diversion reaches nos. 3, 4, and 5, and extension of diversion reach no. 2. Resource Protection staff utilized the subsistence and base environmental flow standards (Title 30 TAC § 298.480) established at USGS Gage No. 08096500 – Brazos River near Waco, TX for the streamflow restriction as shown in Table 1.

Table 1. Environmental Flow Values at USGS Gage No. 08096500 – Brazos River near Waco, TX

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

cfs = cubic feet per second

The applicable base flow values depend on the season. Seasons are defined in Title 30 TAC §298.455 as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Staff recommend that diversions of surface water under this proposed amendment should be limited to comply with the applicable subsistence and base flow values. No streamflow restrictions are recommended for groundwater discharged and diverted by the Applicant under this requested amendment.

Recreational Uses: Brazos River (Segment 1242) has a designated primary contact recreation 1 use (TCEQ 2022a). Castleman Creek has a presumed primary contact recreation 1 use. The Applicant’s request should not adversely impact recreational uses.

Water Quality: Brazos River (Segment 1242) has designated high aquatic life and public water supply uses. Castleman Creek has a presumed high aquatic life use (TCEQ 2022a). The Brazos River from a point immediately upstream of the confluence of the Navasota River in Brazos/Grimes/Washington County to the low water dam forming Lake Brazos in McLennan County is identified in the Texas Integrated Report with a concern for screening levels of nitrate and chlorophyll-a (TCEQ 2022b).

The Applicant indicates groundwater from one well in the Brazos River Alluvium aquifer will be discharged into Castleman Creek and subsequently diverted from diversion reaches nos. 2, 4, and 5. Resource Protection staff have reviewed the Applicant’s groundwater quality information, and the groundwater to be used is of sufficient quality that it should not adversely impact water quality.

Freshwater Inflows: Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project is located more than 200 river miles from the Gulf of Mexico. The application does not request a new appropriation of water; therefore, the Applicant’s request should not have any impact to the Brazos River’s estuary system.

RECOMMENDATIONS

Resource Protection staff recommends the following Special Conditions be included in the proposed amendment, if granted:

1. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens on any new diversion structure(s).
2. Diversions of surface water from diversion reach nos. 3, 4, and 5, and the extension of diversion reach no. 2 shall be restricted based on the following streamflows at USGS Gage No. 08096500 -Brazos River at Waco, TX, as set forth in Special Conditions 3-5 below.

Season	Subsistence	Base
Winter	56 cfs	120 cfs
Spring	56 cfs	150 cfs
Summer	56 cfs	140 cfs

cfs = cubic feet per second

3. Seasons are defined as follows: Winter (November through February), Spring (March through June), Summer (July through October).

Subsistence Flows

4. Permittee shall not divert surface water in diversion reach nos. 3, 4, and 5, and the extension of diversion reach no. 2 if the average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is less than or equal to the applicable subsistence flow in Special Condition 2. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

Base Flows

5. If average streamflow at USGS Gage No. 08096500 - Brazos River at Waco, TX is greater than the applicable base flow, Permittee shall not divert surface water in diversion reach nos. 3, 4, and 5, and the extension of diversion reach no. 2 in excess of the rate that would reduce average streamflow at the gage to the applicable base flow; provided, however, Permittee is not required to adjust its diversion rate more frequently than once every 24 hours.

LITERATURE CITED

Griffith GE, Bryce SA, Omernik JM, Rogers AC. 2007. Ecoregions of Texas - Project Report to Texas Commission on Environmental Quality. Reston (VA): U.S. Geological Survey. Report No.: AS-199. 125p.

Hendrickson DA, Cohen AE. 2015. Fishes of Texas Project Database [Internet]. [2023 January 23]; Version 2.0. Available from <http://www.fishesoftexas.org/home/> doi:10.17603/C3WC70

TCEQ. 2022a. Texas Surface Water Quality Standards §§307.1-307.10. Austin (TX): Texas Commission on Environmental Quality.

TCEQ. 2022b. Texas Integrated Report of Surface Water Quality §§307.1-307.10. Austin (TX): Texas Commission on Environmental Quality.

TPWD. 2015. TPWD County Lists of Texas Protected Species and Species of Greatest Conservation Need [Internet]. Austin (TX): McLennan and Falls Counties, revised January 4, 2023. [2023 January 23]. Available from <http://tpwd.texas.gov/gis/rtest/>.

George M Gable IV


George Gable, Aquatic Scientist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Joshua Schauer, Project Manager
Water rights Permitting Team

Date: April 3, 2023

Through: Leslie Patterson, Team Leader 
Resource Protection Team

From: Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team

Subject: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981
Unnamed tributary of Castleman Creek, Castleman Creek and the
Brazos River, Brazos River Basin
McLennan and Falls counties

APPLICATION SUMMARY

A portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle, LLC (Applicant) to divert 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm) for agricultural purposes to irrigate 2,349.26 acres of land out of a 2,498.12-acre tract in McLennan County.

Applicant requests to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, add three diversion reaches on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek, and add places of use for agricultural purposes to irrigate 3,925.384 acres out of a total of 4,249.349 acres of land in McLennan and Fall counties.

Applicant further requests authorization to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium aquifer, for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes to irrigate the same 3,925.384 acres of land in McLennan and Falls counties.

WATER CONSERVATION REVIEW

Pursuant to Title 30 Texas Administrative Code (TAC) §295.9(4), applications requesting to change the place of use require the submittal of a water conservation plan.

The water conservation plan for agricultural use was reviewed by Resource Protection staff and found to be administratively complete per 30 TAC §288.4.

The application is consistent with the 2021 Region G Water Plan and the 2022 State Water Plan because there is nothing in the water plans that conflicts with issuing this proposed permit.

RECOMMENDATIONS

Resource Protection staff have no recommendations regarding the proposed permit, if granted.



Kristin Wang, Senior Water Conservation Specialist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Joshua Schauer, Project Manager
Water Rights Permitting Team

Date: May 3, 2023

Through ~~K~~ ~~A~~ Kathy Alexander, Ph.D., Policy and Technical Analyst
Water Availability Division

From: Alisa Patterson, P.E., Section Hydrologist
Water Rights Permitting & Availability
Section

Subject: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981
Unnamed tributary of Castleman Creek, Castleman Creek and the
Brazos River, Brazos River Basin
McLennan and Falls counties

Water Availability Review

Application Summary

A portion of Water Use Permit No. 3936 (Permit) authorizes Marecek Land & Cattle, LLC (Applicant) to divert 2,399.24 acre-feet of water per year from five diversion points on the Brazos River, one diversion reach on an unnamed tributary of Castleman Creek, and one diversion reach on Castleman Creek, Brazos River Basin, at a maximum combined diversion rate of 13.37 cfs (6,000 gpm) for agricultural purposes to irrigate 2,349.26 acres of land out of a 2,498.12-acre tract in McLennan County.

Applicant requests to amend its portion of the Permit to remove the five authorized diversion points on the Brazos River, add three diversion reaches on the Brazos River, amend the upstream limit of diversion reach no. 2 on Castleman Creek, and add places of use for agricultural purposes in McLennan and Falls counties.

Applicant further requests authorization to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year from the Brazos River Alluvium aquifer, for subsequent diversion and use, at a maximum diversion rate of 17.82 cfs (8,000 gpm), for agricultural purposes in McLennan and Falls counties.

The application was declared administratively complete on July 1, 2021.

Water Availability Review

Resource Protection Staff recommended that the application be subject to instream flow requirements. Specific instream flow requirements are included in the Resource Protection Staff's memorandum dated April 3, 2021.

The application does not request a new appropriation of water; therefore, a water availability analysis is not necessary. However, the requests to add diversion reaches and amend the upstream limit of a diversion reach must be reviewed to ensure that the requests do not affect other water rights.

The Water Rights Analysis Package (WRAP) simulates management of the water resources of a river basin. TCEQ uses WRAP in the evaluation of water right permit applications using priority-based water allocations. WRAP is a generalized simulation model for application to any river basin, and input datasets must be developed for the particular river basin of concern. The TCEQ developed water availability models (WAMs) for Texas river basins that include geographical information, water right information, naturalized flows, evaporation rates, and specific management assumptions. Hydrology staff operates WRAP to evaluate water rights applications to determine water availability and to ensure that senior water rights are protected.

Staff used the Full Authorization simulation of the Brazos WAM to evaluate impacts on other water rights as a result of adding three diversion reaches on the Brazos River and amending the upstream limit of diversion reach no. 2 on Castleman Creek. The period of record for the Brazos WAM is 1940 to 2018. The permit includes a Hale Clause requirement of 320 cfs (273,785 gpm) from April to August and 80 cfs (35,905 gpm) during the other months at USGS Gage No. 08096500, Brazos River at Waco, TX. The environmental flow requirements recommended by Resource Protection staff are also for USGS Gage No. 08096500, Brazos River at Waco, TX.

For modeling purposes, staff applied the Hale Clause requirement at a gage downstream of the application, USGS Gage No. 08098290, Brazos River near Highbank, TX. When evaluating the application, staff limited diversions to the monthly Hale Clause requirement. Upstream Brazos River Authority reservoir releases cannot be used to satisfy the Hale Clause requirements; therefore, the Hale Clause requirement is more restrictive than the recommended environmental flow requirements from Resource Protection Staff.

Staff modeled the application assuming diversion of the full 2,399.24 acre-feet of water from the requested diversion reaches. Staff compared the pre- and post-volume reliabilities of all water rights in the Brazos River Basin and found small negative impacts to two water rights with an average difference in volume reliability of 0.02 percent.

Regarding the request to use the bed and banks of Castleman Creek and the Brazos River to convey 2,200 acre-feet of groundwater per year for subsequent diversion and use, the application includes the information required in 30 Texas Administrative Code (TAC) 295.113. Staff reviewed the losses associated with the use of the bed and banks of Castleman Creek and the Brazos River and found the estimation of losses to be adequate.

In addition, the application is subject to the requirements and orders of the Brazos Watermaster. The Watermaster actively manages water rights on a daily basis and protects senior water rights in times of shortage. Therefore, existing water rights should not be affected by the application.

Conclusion

Staff can support granting the application provided the permit includes the following special conditions:

1. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of surface water diverted from the diversion reaches authorized in Paragraph 1. DIVERSION and maintain measurement records.
2. Permittee shall only divert the daily amount of groundwater discharged into Castleman Creek less losses.
3. Prior to diversion of the conveyed groundwater authorized herein, if sufficiently accurate measuring devices are not available, Permittee shall install and maintain measuring device(s), at any discharge point of the groundwater and at any authorized diversion point, capable of measuring within plus or minus 5% accuracy. Permittee shall maintain records of the amount of groundwater discharged and subsequently diverted on a daily basis and make those records available to the Executive Director upon request.

Alisa Patterson

Alisa Patterson, P.E., Section Hydrologist

TCEQ Interoffice Memorandum

TO: Office of the Chief Clerk
Texas Commission on Environmental Quality

THRU: Chris Kozlowski, Team Leader
Water Rights Permitting Team

FROM: Bert Galvan, Work Leader
Water Rights Permitting Team

DATE: July 1, 2021

SUBJECT: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981, RN105805055
Application No. 3936D to Amend Water Use Permit No. 3936
Texas Water Code §§ 11.122, 11.042, Requiring Limited Mailed Notice
Unnamed tributary of Castleman Creek, Castleman Creek and the Brazos River,
Brazos River Basin
McLennan and Falls counties

The application and fees were received on April 8, 2021. Additional information was received on June 15, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 1, 2021. Mailed notice to the interjacent water right holders of record in the Brazos River Basin and notice to Office of Public Interest Council and Texas Parks and Wildlife Department is required pursuant to Title 30 Texas Administrative Code §§ 295.161(b), 295.161(c), 295.158(c)(2)(B), 295.158(c)(3)(C), and 295.158(c)(3)(D).

All fees have been paid and the application is sufficient for filing.



Bert Galvan, Work Leader
Water Rights Permitting Team
Water Rights Permitting and Availability Section

OCC Mailed Notice Required

YES

NO

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 1, 2021

Mr. Richard George
Enviro-Ag Engineering, INC.
9855 FM 847
Dublin, TX 76446

VIA-EMAIL

RE: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981, RN105805055
Application No. 3936D to Amend Water Use Permit No. 3936
Texas Water Code §§ 11.122, 11.042, Requiring Limited Mailed Notice
Unnamed tributary of Castleman Creek, Castleman Creek, and the Brazos River, Brazos
River Basin
McLennan and Falls counties

Dear Mr. George:

This acknowledges receipt of additional information on June 15, 2020.

The application was declared administratively complete and filed with the Office of the Chief Clerk on July 1, 2021. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

If you have any questions concerning this matter please contact me via email at humberto.galvan@tceq.texas.gov or by telephone at (512) 239-4013.

Sincerely,

A handwritten signature in black ink, appearing to read "Bert Galvan".

Bert Galvan, Work Leader
Water Rights Permitting Team
Water Rights Permitting and Availability Section



June 15, 2021

TCEQ
Attn: Bert Galvan
Water Rights Permitting Team
Water Availability Division, MC-160
P.O. Box 13087
Austin, TX 78711-3087

Re: Marecek Land & Cattle, LLC
App. No. 3936D
CN604935981, RN 105805055

Dear Mr. Galvan,

Attached please find the response to all items listed in the certified letter dated May 12, 2021 for the above referenced application.

Please feel free to call or email me if you have any questions or require any additional information.

Sincerely,

Richard George

Richard George
Environmental Consultant

enc. Certified Letter Response

CORPORATE OFFICE
3404 AIRWAY BLVD
AMARILLO, TEXAS 79118
800.753.6525

CENTRAL TEXAS OFFICE
9855 FM 847
DUBLIN, TEXAS 76446
800.753.6525

NEW MEXICO OFFICE
203 EAST MAIN STREET
ARTESIA, NEW MEXICO 88210
800.753.6525

www.enviroag.com

Certified Letter Response:

1. The coordinates submitted in the application for the points referenced are on the bank at the high-water level of the river. The coordinates in the RFI that TCEQ staff calculated appear to be at the exact water level on the bank in the current Google Earth aerial. Any coordinate other than the one at the high-water level of the river will fluctuate based on the water level in the river at any given time. This coordinate only serves as the starting point for an invisible line from the applicant's property stretching across the river where the diversion reach starts or stops—this seems like splitting hairs to me, but you can use either the set of coordinates provided in the application or the ones TCEQ staff calculated.
2. The coordinates submitted in the application for "Upstream Limit of Diversion Reach No. 2" were incorrect. The correct coordinates (consistent with the submitted map) are as follows:
Latitude 31.436464; Longitude -97.060226
3. Estimated losses from transportation, evaporation, seepage, channel, and other associated carriage losses from the point of discharge to the point of diversion are estimated to be at roughly 5% for the diversion reach located on **Castleman Creek** (per TCEQ Water Rights staff guidance for tributaries flowing into the Brazos River).

Losses on the segment of the **Brazos River** were estimated using the information provided by TCEQ staff (data from memo dated September 19, 2001 from David D. Dunn, P.E. to Danny Lien, P.E. utilized in the Brazos WAM). Based on the Segment Delivery Factor in Table 1 of the memo, 98.619% of the water passing through the Brazos River at Waco (BR_WA) makes it downstream to the Brazos River near Highbank (BR-HB), meaning there is an average loss of 1.381% for this reach which is where the applicant's diversion authorizations are/will be located.

Castleman Creek: (Upstream Limit to Downstream Limit of Diversion Reach 2) =
Linear miles of discharge flow 4.23

Brazos River: (Upstream Limit of Diversion Reach 4 to Downstream Limit of Diversion Reach 5) =
Linear miles of discharge flow 16.18

With the entire length of flow from the upper limit of Castleman Creek to the lower limit on the Brazos River, the segment is 20.41 miles.

Calculations for average loss:

Castleman Creek Length/Total Length (4.23/20.41=0.2073) = 20.73% of total flow length @ 5% loss
Brazos River Length/Total Length (16.18/20.41=0.7927) = 79.27% of total flow length @ 1.381% loss

Average Loss Calculation (Castleman Creek + Brazos)

20.73 x 5 = 103.65

79.27 x 1.381 = +109.47187

213.12187 ÷ 100 = **2.13% Average loss for the 20.41 mile segment.**

To account for the estimated **2.13%** loss listed above, the applicant proposes two methods for authorization in the permit as follows:

Method 1: Diverting 2.3% (or greater) less water than is simultaneously being discharged. Flowmeters will be installed on the discharge and diversion pipes so the applicant can log that the diversion was reduced by at least 2.3% account for the required losses for each pumping event.

EX: 8,000 GPM discharge rate
 $8,000 \text{ GPM} \times .023 = 184 \text{ GPM}$
 Diversion rate $8,000 \text{ GPM} - 184 \text{ GPM} = 7,816 \text{ GPM}$

Method 2: During an event where the applicant is discharging water and simultaneously diverting for irrigation, when the diversion pump is shut off, the applicant proposes to leave the discharge pump running until 2.3% of the diverted total for the day has been pumped back into the surface water body.

EX: Discharge rate 8,000 GPM; Diversion rate 8,000 GPM

- both pumps running 8 hours
- $8,000 \text{ GPM} \times 60 \text{ min.} = 480,000 \text{ GPH}$
- $480,000 \text{ GPH} \times 8 \text{ hrs.} = 3,840,000 \text{ gallons discharged and diverted}$
- $3,840,000 \times .023 = 88,320 \text{ gallons}$
- Shut off diversion pump and discharge an additional 11.04 minutes @ 8,000 gpm to make up the 2.3% or 88,320 gallons in this scenario.

4. The deeds submitted are a total of 4,249.349 acres as follows:

Deed	Owner	Tract/Acres	Irrigable Acres
2012039763 (Dec. 19, 2012)	Marecek Land & Cattle	2,540.974	2,540.974
2021002242 (Jan. 20, 2021)	CTEX, LLC	81.25	81.25
2021002244 (Jan. 20, 2021)	CTEX, LLC	25.00	25.00
2021004053 (Jan. 1, 2021)	CTEX, LLC	Tract 1: 318.755 Tract 2: 175.210	0 170.00
00005810 (Jan. 8, 2021)	CTEX, LLC	Tract 1: 1,108.16 Tract 2: No Data	1,108.16 0
		Total Acres: 4,249.349	Total Irr. Acres: 3,925.384

5. Revised Attachment F attached with the requested change.
6. Revised Attachment F attached with the requested change.

Attachment F


**THE STATE OF TEXAS
COUNTY OF McLennan**

Letter of Consent to Use Groundwater/Consent to Irrigate:

This letter is to certify that CTEX, LLC, does hereby give consent to Marecek Land & Cattle, LLC use of Brazos Alluvium Aquifer groundwater located on the property owned by CTEX, LLC, identified in the Warranty Deed With Vendor's Lien, "Exhibit A," as filed and recorded at the McLennan County Clerk's Office on 2/1/2021 (Instrument # 2021004053). CTEX, LLC agrees to give Marecek Land & Cattle, LLC consent install and operate pumps as needed and consent to convey said groundwater across any land identified in the aforementioned deed. CTEX, LLC also gives Marecek Land & Cattle, LLC consent to irrigate on any land owned by CTEX, LLC in the deeds in the application including the 1,108.16-acre tract, 25 acre tract & 81.25 acre tract.

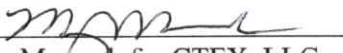
CTEX, LLC acknowledges that the water right will not become appurtenant to the land owned by CTEX, LLC.

This agreement shall remain effective for the duration of the time CTEX, LLC owns the property listed above.



Glen Marecek for CTEX, LLC

5-27-21
Date



Mary Marecek for CTEX, LLC

5-27-21
Date



Glen Marecek for Marecek Land & Cattle, LLC

5-27-21
Date



Mary Marecek for Marecek Land & Cattle, LLC

5-27-21
Date

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 12, 2021

Mr. Richard George
Enviro-Ag Engineering, INC.
9855 FM 847
Dublin, TX 76446

VIA-EMAIL

RE: Marecek Land & Cattle, LLC
WRPERM 3936
CN604935981, RN105805055
Application No. 3936D to Amend Water Use Permit No. 3936
Texas Water Code § 11.122, Requiring Limited Mailed Notice
Unnamed tributary of Castleman Creek and Castleman Creek, Brazos River Basin
McLennan and Falls counties

Dear Mr. George:

This acknowledges receipt on April 8, 2021, of the referenced application and fees in the amount of \$225.00 (Receipt No. M116448, copy attached).

Additional information is required before the application can be declared administratively complete.

1. Confirm the coordinates for the diversion reaches. Staff has calculated the following coordinates for locations on the Brazos River:

Name	Latitude	Longitude
Upstream Limit of Diversion Reach #3	31.466305	-97.038087
Downstream Limit of Diversion Reach #4	31.448772	-96.998204
Upstream Limit of Diversion Reach #5	31.343170	-96.998435
Downstream Limit of Diversion Reach #5	31.337441	-97.000582

2. Clarify the latitude and longitude coordinates in decimal degrees, to at least six decimal places for the "Upstream Limit of Diversion Reach No. 2". Staff notes the coordinates provided are not consistent with the point on the applicant provided map.
3. Provide an estimate of the losses due to transportation, evaporation, seepage and channel or other associated carriage losses from the point of discharge to the point of diversion of the groundwater and the method used to calculate the losses (Title 30 Texas Administrative Code (TAC) § 295.113).

Mr. Richard George
Application No. 3936D
May 12, 2021
Page 2 of 2

4. Confirm the applicant requests to irrigate 3,925.384 acres out of 4,074.139 acres. Additionally, provide a detailed list of which portions of each tract of land out of the deeds provided the applicant requests to add as a place of use. Staff notes the deeds provided are for a total of 4,267.367 acres of land.
5. Provide consent from CTEX, LLC stating that the landowner recognizes that the permit will be owned by the applicant and will not become appurtenant to the lands owned by CTEX, LLC, pursuant to 30 TAC § 295.32(5).
6. Provide consent to the application for the use of the 1,108.16, 25, & 81.25-acre tracts of land owned by CTEX, LLC, pursuant to Title 30 TAC § 295.32(a)(5). Staff notes consent to the application for use of the 318.755 and the 175.210-acre tracts of land was provided by CTEX, LLC.

Please provide the requested information by June 11, 2021 or the application may be returned pursuant to Title 30 TAC § 281.18.

Staff notes application fees will be calculated pending response to this letter and additional information and fees may be required before the application can be declared administratively complete.

If you have any questions concerning this matter, please contact me via email at humberto.galvan@tceq.texas.gov or by telephone at (512) 239-4013.

Sincerely,



Bert Galvan, Work Leader
Water Rights Permitting Team
Water Rights Permitting and Availability Section

Attachment



14-APR-21 01:20 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u> <u>Account Name</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M116448	1136		BS00086654	14-APR-21	-\$225.00
	WUP	123936	041421	N	D1803084		
<i>H. Galvan</i> WATER USE PERMITS		MARECEK	VHERNAND	CK			
		LAND AND CATTLE LLC					
	WUP	M116449	8843		BS00086654	14-APR-21	-\$100.00
	WUP	213026	041421	N	D1803084		
<i>K. Buckley</i> WATER USE PERMITS		DAVIS	VHERNAND	CK			
		MCMAHON LP					
Total (Fee Code):							-\$325.00

RECEIVED
APR 16 2021
Water Availability Division



April 8, 2021

TCEQ
Water Availability Division, MC 160
P.O. Box 13087
Austin, TX 78711-3087

Re: Bed & Banks Application
Amendment App. for Permit # 3936

To whom it may concern,

Attached please find an application to add a Bed & Banks authorization as well as an amendment application for Permit # 3936. A check is enclosed for the \$112.50 Bed & Banks filing & recording fees and \$112.50 for the amendment filing & recording fees. Please call me at 254-233-9948 if you have any questions.

Sincerely,

Richard George
Environmental Consultant
Enviro-Ag. Engineering, Inc.

enc. TCEQ Form 10214B
TCEQ Form 10214C
Attachments

AMARILLO OFFICE
3404 AIRWAY BLVD
AMARILLO, TEXAS 79118
800.753.6525

STEPHENVILLE OFFICE
9855 FM 847
DUBLIN, TEXAS 76446
800.753.6525

ARTESIA OFFICE
203 EAST MAIN STREET
ARTESIA, NEW MEXICO 88210
800.753.6525

www.enviroag.com



www.cafopro.com

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ WATER RIGHTS PERMITTING APPLICATION

ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page. 5.

APPLICANT(S): Marecek Land & Cattle, LLC

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

Y/N		Y/N	
<u>Y</u>	Administrative Information Report	<u>Y</u>	Worksheet 3.0
<u>N</u>	Additional Co-Applicant Information	<u>Y</u>	Additional W.S 3.0 for each Point
<u>N</u>	Additional Co-Applicant Signature Pages	<u>Y</u>	Recorded Deeds for Diversion Points
<u>Y</u>	Written Evidence of Signature Authority	<u>N</u>	Consent For Diversion Access
<u>Y</u>	Technical Information Report	<u>Y</u>	Worksheet 4.0
<u>Y</u>	USGS Map (or equivalent)	<u>N</u>	TPDES Permit(s)
<u>Y</u>	Map Showing Project Details	<u>N</u>	WWTP Discharge Data
<u>Y</u>	Original Photographs	<u>N</u>	24-hour Pump Test
<u>N</u>	Water Availability Analysis	<u>Y</u>	Groundwater Well Permit
<u>Y</u>	Worksheet 1.0	<u>N</u>	Signed Water Supply Contract
<u>Y</u>	Recorded Deeds for Irrigated Land	<u>Y</u>	Worksheet 4.1
<u>Y</u>	Consent For Irrigation Land	<u>Y</u>	Worksheet 5.0
<u>N</u>	Worksheet 1.1	<u>Y</u>	Addendum to Worksheet 5.0
<u>N</u>	Addendum to Worksheet 1.1	<u>Y</u>	Worksheet 6.0
<u>Y</u>	Worksheet 1.2	<u>Y</u>	Water Conservation Plan(s)
<u>N</u>	Addendum to Worksheet 1.2	<u>N</u>	Drought Contingency Plan(s)
<u>N</u>	Worksheet 2.0	<u>N</u>	Documentation of Adoption
<u>N</u>	Additional W.S 2.0 for Each Reservoir	<u>N</u>	Worksheet 7.0
<u>N</u>	Dam Safety Documents	<u>N</u>	Accounting Plan
<u>N</u>	Notice(s) to Governing Bodies	<u>Y</u>	Worksheet 8.0
<u>N</u>	Recorded Deeds for Inundated Land	<u>Y</u>	Fees
<u>N</u>	Consent For Inundation Land		

For Commission Use Only:

Proposed/Current Water Right Number: _____

Basin: _____ Watermaster area Y/N: _____

ADMINISTRATIVE INFORMATION REPORT

The following information is **required** for all new applications and amendments.

*****Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4691.**

1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

New Appropriation of State Water

Amendment to a Water Right *

Bed and Banks

****If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2, does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.***

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

Marecek Land & Cattle, LLC is submitting this application to add a Bed & Banks authorization

to Permit # 3936 to discharge groundwater into Castleman Creek @ 8,000 gpm for

subsequent/simultaneous diversion downstream (@8,000 gpm) from 1 diversion reach on

Castleman Creek and 2 diversion reaches on the Brazos River for agricultural irrigation on

3,925.384 acres in McLennan & Falls Counties. The applicant is also proposing to amend Pmt.

#3936 to remove the 5 existing diversion points on the Brazos River, add three new diversion

reaches on the Brazos River (for a total of 5 authorized diversion reaches), amend the upstream

limit for the currently authorized diversion reach #2 on Castleman Creek and add new places of

use for a total of 3,925.384 irrigable acres in McLennan & Falls Counties.

2. APPLICANT INFORMATION (Instructions, Page. 6)

a. Applicant

Indicate the number of Applicants/Co-Applicants 1
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

Marecek Land & Cattle, LLC

(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)?
You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN: 604935981 (leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: Glen Marecek

Title: President

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application? Yes

What is the applicant's mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: Marecek Land & Cattle, LLC

Mailing Address: 2966 Hacienda Wesley

City: Waco

State: TX

ZIP Code: 76706-7468

Indicate an X next to the type of Applicant:

<input type="checkbox"/> Individual	<input type="checkbox"/> Sole Proprietorship-D.B.A.
<input type="checkbox"/> Partnership	<input checked="" type="checkbox"/> Corporation
<input type="checkbox"/> Trust	<input type="checkbox"/> Estate
<input type="checkbox"/> Federal Government	<input type="checkbox"/> State Government
<input type="checkbox"/> County Government	<input type="checkbox"/> City Government
<input type="checkbox"/> Other Government	<input type="checkbox"/> Other _____

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: 32049591343 SOS Charter (filing) Number: 0801691493

3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: **Richard George**

Title: **Environmental Consultant**

Organization Name: **Enviro-Aq. Engineering, Inc.**

Mailing Address: **9855 FM 847**

City: **Dublin**

State: **TX**

ZIP Code: **76446**

Phone No.: **254-485-3436**

Extension:

Fax No.:

E-mail Address: 

4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION (Instructions, Page. 9)

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and **all** owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name:

Title:

Organization Name:

Mailing Address:

City:

State:

ZIP Code:

Phone No.:

Extension:

Fax No.:

E-mail Address:

5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)

a. The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4691, prior to submitting your application.

1. Does Applicant or Co-Applicant owe any fees to the TCEQ? **Yes / No No**

If **yes**, provide the following information:

Account number:

Amount past due:

2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? **Yes / No No**

If **yes**, please provide the following information:

Enforcement order number:

Amount past due:

b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicant's may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>

Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes / No Yes**

c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5).

Applicant has submitted all required TWDB surveys of groundwater and surface water? **Yes / No N/A**

6. SIGNATURE PAGE (Instructions, Page. 11)

Applicant:

I, Glen Marecek (for Marecek Land & Cattle, LLC) President

(Typed or printed name)

(Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature: Glen Marecek
(Use blue ink)

Date: 2-26-21

Subscribed and Sworn to before me by the said

on this 26 day of February, 2021

My commission expires on the 6 day of October, 2024.



Notary Public

[SEAL]



County, Texas

McLennan

If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page

**UNANIMOUS CONSENT OF MEMBERS
OF**

MARECEK LAND & CATTLE, LLC

In Lieu of Organizational Meeting

Pursuant to the authority contained in the Texas Business Organizations Code, the undersigned, being all of the Members of MARECEK LAND & CATTLE, LLC, hereby adopt the following resolutions:

WHEREAS, MARECEK LAND & CATTLE, LLC is a Texas Limited Liability Company, ("the Company") organized in Texas with the Secretary of State on November 29, 2012 under File No. 801691493;

WHEREAS, Glen B. Marecek and Mary C. Marecek, and Mary Cravens Chamberlain Marecek, as Trustee of the Mary Cravens Chamberlain 1995 Trust are all of the initial Members of the Company;

WHEREAS, Glen B. Marecek and Mary C. Marecek, individually, and Mary C. Marecek (a/k/a Mary Cravens Chamberlain and Mary Cravens Chamberlain Marecek), as Trustee of the Mary Cravens Chamberlain 1995 Trust desire to transfer to the Company all of that 2,558.992 acres of land in McLennan County, Texas that they acquired from Holy Land & Cattle, a Texas general partnership, on September 14, 2012 (the "McLennan Property") in exchange for the Company's assumption of a Promissory Note in the original principal sum of \$5,000,000 (the "Note"), a true and correct copy of which is attached hereto.

WHEREAS, the Company desires to assume all of the duties and obligations of the initial Borrowers under the Note, including payment of principal and interest as they become due, in accordance with an Assumption Agreement with Release and Consent to Transfer, a true and correct copy of which is attached hereto and to grant to the initial Members a Deed of Trust to Secure Assumption lien on the McLennan Property; and

WHEREAS, all of the Members of the Company unanimously adopted the following resolutions in lieu of an organizational meeting of the Members.

NOW, THEREFORE, be it:

RESOLVED, that the Certificate of Formation and the Certificate of Filing should be filed in the minute book of the Company;

FURTHER RESOLVED, that a proposed Company Agreement for the government of the Company was considered and unanimously adopted as the Company Agreement of the Company;

FURTHER RESOLVED, that the following persons are elected to the respective offices preceding their names:

President:	Glen B. Marecek
Vice President and Secretary:	Mary C. Marecek

RESOLVED that one hundred percent (100%) of the Membership Interests of the Company be issued to the following Members in the percentages set opposite their names:

	<u>Membership Interests</u>
Glen B. Marecek and Mary C. Marecek	50%
Mary Cravens Chamberlain Marecek, as Trustee of the Mary Cravens Chamberlain 1995 Trust	50%

RESOLVED, that a financial institution chosen by the President is designated as the depository for the funds of the Company, and that the officers are authorized in connection therewith to execute the bank account resolution form;

RESOLVED FURTHER, that any checks drawn on the bank account hereby authorized shall require the signature of either Glen B. Marecek, as President, or Mary C. Marecek, as Vice President and Secretary; whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed;

BE IT FURTHER RESOLVED, that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or orders so drawn, whether such checks, drafts, notes or orders be payable to the order of any such person signing said checks, drafts, notes or orders, or any of such persons in their individual capacities or not, whether such checks, drafts, notes or orders are deposited to the individual credit of the person so signing said checks, drafts, notes or orders, or to the individual credit of any of the other officers or note;

RESOLVED FURTHER, that this resolution shall continue in force, and said Bank may consider the holders of said offices and their signatures, respectively,

to be and continue as set forth in the certificates of the secretary of this Company accompanying a copy of this resolution when delivered to said Bank or in any similar subsequent certificate, until notice to the contrary in writing is duly served on said Bank;

BE IT RESOLVED, that Glen B. Marecek, as President, and Mary C. Marecek, as Vice President and Secretary, be and they are hereby authorized for, on behalf of, and in the name of this Company to:

- a. Negotiate and procure loans from any financial institution chosen by the President ("Bank"), provided that Glen B. Marecek, as President, and Mary C. Marecek, as Vice President and Secretary, must execute any notes or other evidences of such loans;
- b. Discount with said Bank, commercial or other business paper belonging to this Company, made or drawn by or upon third parties, without limit as to amount;
- c. Give security for any liabilities of this Company to said bank by pledge or assignment or a lien upon any real or personal property, tangible or intangible, of this Company; and
- d. Execute in such form as may be required by the Bank all notes and other evidences of such loans, all instruments of pledge, assignment of lien, and that none of the same shall be valid unless so signed or endorsed, provided, however, that the endorsement of promissory notes discounted may be effected by any one of them;

RESOLVED FURTHER, that said Bank be and it is hereby authorized and directed to pay the proceeds of any such loans or discounts as directed by the persons so authorized to sign, whether so payable to the order of any of said persons in their individual capacities or not, and whether such proceeds are deposited to the individual credit of any said persons or not;

RESOLVED FURTHER, that this resolution shall continue in force, and said Bank may consider the holders of said offices and their signatures, respectively, to be and continue as set forth in the certificate of the secretary of this Company accompanying a copy of this resolution when delivered to said Bank or in any similar subsequent certificate, until notice to the contrary in writing is duly served on said Bank;

RESOLVED, that the President of the Company be and hereby is authorized to pay all charges and expenses incident to or arising out of the organization of the Company and to reimburse any person who has made any disbursement therefor;

RESOLVED, that the officers of the Company are authorized to incur travel and entertainment expenses necessary to the performance of such person's duties as an officer of the Company;

RESOLVED, that the principal office of the Company be established at 25900 SCR 1160, Midkiff, Texas, 79755;

FURTHER RESOLVED, that the officers of the Company are directed to obtain in the name of the Company such other licenses and tax permits as may be required for the conduct of the business of the Company by any federal, state, county, or municipal governmental statute, ordinance, or regulation, and to do all things necessary or convenient to qualify the Company to transact its business in compliance with the laws and regulations of any appropriate federal, state, or municipal governmental authority;

FURTHER RESOLVED, that for the purpose of authorizing the Company to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for this Company to transact business, the proper officers of the Company are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Company to transact business therein;

RESOLVED, that the Company books shall be kept on the cash and calendar year basis until further action of the Members;

RESOLVED FURTHER, that Glen B. Marecek be designated as the "Tax Matters Partner" of the Company as provided in Section 11.03 of the Company Agreement of the Company;

RESOLVED, that it would be in the best interests of the Company and the Members of the Company to assume all of the duties and obligations of the initial Borrowers under the Note, including payment of principal and interest as they become due, in accordance with an Assumption Agreement with Release and Consent to Transfer, in exchange for the conveyance of the McLennan Property to the Company;

RESOLVED FURTHER, that it would be in the best interests of the Company and the Members of the Company to grant to the initial Members a Deed of Trust to Secure Assumption lien on the McLennan Property;

RESOLVED FURTHER that it would be in the best interests of the Company to execute the Assumption Agreement with Release and Consent to Transfer and to bind the Company to the terms and conditions stated therein;

FURTHER RESOLVED, that Glen B. Marecek, as President and on behalf of the Company, is authorized to execute the Assumption Agreement with Release and Consent to Transfer and all other documents and instruments required to pledge the Company's assets to secure the Note;

FURTHER RESOLVED, that the actions taken by the Organizer prior to the organization of the Company, but for and on behalf of the Company, are hereby approved, ratified and adopted as if done pursuant to authorization of the Members of the Company; and

RESOLVED FURTHER, that the Members have unanimously consented, confirmed, ratified, adopted and approved the actions hereby taken.

DATED: November 29, 2012.

 member
GLEN B. MARECEK, Member

 member
MARY C. MARECEK, Member

MARY CRAVENS CHAMBERLAIN 1995 TRUST,
Member

By:  TRUSTEE
MARY CRAVENS CHAMBERLAIN MARECEK,
Trustee

**COMPANY AGREEMENT
OF**

MARECEK LAND & CATTLE, LLC,

a Texas Limited Liability Company

This Company Agreement of MARECEK LAND & CATTLE, LLC is executed as of November 29, 2012 (the "Effective Date") by the persons who sign and are identified as "Members" in this Agreement.

**ARTICLE I
DEFINITIONS**

1.01 Definitions. As used in this Agreement, the following terms have the following meanings:

"Affiliate" means, with reference to any person, any other person controlling, controlled by or under direct or indirect common control with such person.

"Agreement" means this Company Agreement, as amended from time to time.

"Assignee" means a person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member.

"Bankrupt Member" means (except to the extent a Simple Majority consents otherwise) any Member (a) that (i) makes an assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, termination, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a Proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which a Proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and one hundred twenty (120) days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and ninety (90) days have expired without the appointment's having been vacated or stayed, or ninety (90) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Texas are closed.

"Capital Account" means a capital account maintained for a Member as provided by Treasury Regulation 1.704-1(b)(2)(iv) of the Regulations of the Internal Revenue Service.

"Capital Contribution" means the amount of money and the Net Value of property other than money contributed to the Company by a Member.

"Capital Commitment" of a Member represents the aggregate amount of capital that such Member has agreed to contribute to the Company.

"Certificate of Formation" means the initial, amended, and restated certificate of formation of the Company.

"Company" means MARECEK LAND & CATTLE, LLC, a Texas limited liability company.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) three percent (3%) plus the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"Former Member" means any person who had executed this Agreement, as of the date of this Agreement as a Member, or hereafter admitted to the Company as a Member, as provided in the Agreement, but who is no longer a Member of the Company; however, this term does not include a person who ceases to be a Member as a result of bankruptcy, default or expulsion.

"Fundamental Business Transaction" has that meaning assigned to it by the definitions in the TBOC, as may be amended from time to time, and includes (a) a merger, (b) an interest exchange, (c) a conversion, or (d) a sale of all or substantially all of an entity's assets (with or without good will), other than in the usual and regular course of the Company's business.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

"Internal Revenue Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Manager" means any person named in the Certificate of Formation as an initial Manager of the Company and any person hereafter elected as a Manager of the Company as provided in this Agreement, but does not include any person who has ceased to be a Manager of the Company.

"Member" means any person executing this Agreement as of the date of this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement, but does not include any person who has ceased to be a Member of the Company.

"Membership Interest" means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, right to consent or approve, and Ownership Interest, as hereafter defined.

"Net Value" means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

"Ownership Interest" means the ratio in which the Members shall share profits and losses, as provided in this Agreement. The sum of the Members' Interests shall be one hundred percent (100%). The initial Ownership Interest of each Member is set forth in Exhibit "A" attached hereto.

"Person" means any business entity, trust, estate, executor, administrator, or individual.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative.

"Simple Majority" means one or more Members having among them more than fifty percent (50%) of the Ownership Interests of all Members.

"Super Majority" means one or more Members having among them more than sixty-six and two-thirds percent (66-2/3%) of the Ownership Interests of all Members.

"TBOC" means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

"Transfer" means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of transfer of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor's lifetime or upon or after the transferor's death, including by operation of law, court order, judicial process, foreclosure, levy or attachment.

Other terms defined herein have the meaning so given them.

ARTICLE II ORGANIZATION

2.01 Formation. The Company has been organized as a Texas limited liability company by filing a Certificate of Formation with the Secretary of State of Texas, which may be amended or restated from time to time.

2.02 Name. The name of the Company is "MARECEK LAND & CATTLE, LLC" and all Company business must be conducted in that name or such other names that comply with applicable law as the Members may select from time to time.

2.03 Registered Office and Registered Agent. The registered office of the Company required by the TBOC to be maintained in the State of Texas shall be the office of the initial registered agent named in the Certificate of Formation or such other office (which need not be a place of business of the Company) as the Members may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Texas shall be the initial registered agent named in the Certificate of Formation or such other person or persons as the Members may designate from time to time in the manner provided by law.

2.04 Principal Office and Other Offices. The principal office of the Company in the United States shall be at such place as the Members may designate from time to time, which need not be in the State of Texas. The Company may have such other offices as the Members may designate from time to time.

2.05 Purposes. The primary purposes of the Company shall be for the transaction of any and all lawful purposes for which the Limited Liability Company may be organized under the Texas Business Organizations Code.

2.06 Powers. The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; (b) to borrow or lend money and secure payment thereof; (c) to engage in all activities and transactions; and (d) to have all powers available to a limited liability company under (i) the TBOC, (ii) any other laws in the State of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

2.07 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Texas, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Members, each Member shall immediately execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.08 Term. The Company will commence as provided in the Certificate of Formation for the Company filed with the Secretary of the State of Texas, and will continue until the Company terminates under the terms of this Agreement.

2.09 Mergers and Exchanges. The Company may be a party to a merger, an exchange, or acquisition under the TBOC, subject to the requirements of this Agreement.

2.10 No State-Law Partnership. The Members intend that the Company not be a partnership, a limited partnership, or a joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

ARTICLE III MEMBERSHIP

3.01 Initial Members, Capital Commitments, and Ownership Interests. The persons listed on Exhibit A are hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date of formation of the Company. Set forth opposite the name of each Member listed on Exhibit A is such Member's Ownership Interest. Exhibit A may be amended from time to time to reflect changes in or additions to the membership of the Company. Any such amended Exhibit A shall (a) supersede all prior Exhibit A's, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company. Each Member represents that the Member is acquiring an interest in the Company for the account of such Member and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. The Member will not transfer such interest in contravention of that act or any applicable state or federal securities laws. No certificates of

Membership Interests shall be issued.

3.02 Additional Members. Additional persons may be admitted to the Company as Additional Members on such terms and conditions as shall be determined by unanimous consent of the Members. The terms of admission or issuance must specify the Ownership Interests and the Capital Commitments applicable thereto. The terms of admission or issuance may also provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Members shall reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Members.

3.03 Member Rights Specified in Agreement. Except as otherwise specifically provided in this Agreement, no Member shall have the right (a) to sell, transfer or assign its interest in the Company; (b) to require partition of the property of the Company; (c) to compel the sale of Company assets; or (d) to cause the winding up of the Company.

3.04 No Authority. Except as otherwise specifically provided in this Agreement, no Member has the authority or power to (a) transact business in the name of or on behalf of the Company, (b) bind or obligate the Company, or (c) incur any expenditures on behalf of the Company.

3.05 Liability to Third Parties. No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.06 Withdrawal. A Member may withdraw from the Company with sixty (60) days notice to the Members of the Company, subject to winding up or termination as provided in Article XVI of this Agreement.

ARTICLE IV CAPITAL CONTRIBUTIONS

4.01 Initial Contributions. Each Member shall make initial Capital Contributions.

4.02 No Further Contributions. No Member shall be required to make any Capital Contributions other than those specifically described by this Agreement, unless agreed to in writing by the contributing Member or required by the TBOC.

4.03 Return of Contributions. No Member is entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member.

4.04 Loans by Members. If the Company does not have sufficient cash to pay its obligations, any Member that may agree to do so with the Members' consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this paragraph constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.05 Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member:

(a) shall consist of (i) the amount of money contributed by that Member to the Company, and (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Internal Revenue Code);

(b) shall be increased by allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation § 1.704-1(b)(4)(i); and

(c) shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under section 752 of the Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (c)(iii) above and loss or deduction described in Treasury Regulation § 1.704-1(b)(4)(i) or § 1.704-1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation § 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, as required by Treasury Regulation § 1.704-1(b)(2)(iv)(g). A Member that has more than one Membership Interest shall have a single Capital Account that reflects all its Membership Interests, regardless of the class of Membership Interests owned by that Member and regardless of the time or manner in which those Membership Interests were acquired. On the transfer of all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f).

ARTICLE V ALLOCATIONS AND DISTRIBUTIONS

5.01 Allocations.

(a) Except as may be required by Section 704(c) of the Internal Revenue Code and Treasury Regulation § 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction and credit of the Company shall be allocated among the Members in accordance with their Ownership Interests.

(b) All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under Section 706 of the Internal Revenue Code and the regulations thereunder.

(c) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of the Company's income and gain shall be specially allocated as a qualified income offset to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this paragraph 5.01(c) shall be made only if and to the extent that such Member has an Adjusted Capital Account Deficit after all other allocations provided for in this Article have been tentatively made as if this paragraph 5.01(c) were not in this Agreement.

5.02 Distributions.

(a) From time to time (but at least once each calendar quarter) the Members shall determine in their reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Members shall cause the Company to distribute to the Members, in accordance with their Ownership Interests, an amount in cash equal to that excess.

(b) From time to time the Members also may cause property of the Company other than cash to be distributed to the Members, which distribution must be made in accordance with their Ownership Interests and may be made subject to existing liabilities and obligations. Immediately prior to such a distribution, the Capital Accounts of the Members shall be adjusted as provided in Treasury Regulation § 1.704-1(b)(2)(iv)(f).

ARTICLE VI MANAGEMENT

6.01 Management by Members. The Members shall have the sole and exclusive control of the management, business and affairs of the Company, and the Members shall make all decisions and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

(a) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder, including a Fundamental Business Transaction;

(b) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(c) maintaining the assets of the Company in good order;

(d) collecting sums due the Company;

(e) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;

(f) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;

(g) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

(h) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(i) obtaining insurance for the Company;

(j) determining distributions of Company cash and other property as provided in paragraph 5.02 of this Agreement;

(k) establishing a seal for the Company; and

(l) designating one or more committees, each of which shall be comprised of one or more Members, to exercise any authority of the Members in the management, business and affairs of the Company.

6.02 Restrictions. Notwithstanding the provisions of paragraph 6.01 of this Agreement, the Members may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(a) do any act in violation of this Agreement;

(b) admit a Member, except as expressly permitted by this Agreement;

(c) do any act which requires the prior approval of the Members;

(d) possess Company property or assign rights in Company property, other than for a Company purpose; or

(e) amend this Agreement, except as expressly permitted by this Agreement.

ARTICLE VII CONFIDENTIAL INFORMATION

7.01 Confidential Information. The Members agree that the Members from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information. The Members acknowledge that, from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than another Member, except for disclosures (i) compelled by law (but the Member must notify the Member promptly of any request for that information, before disclosing it, if practicable), (ii) to advisers or representatives of the Member or persons to which that Member's Membership Interest may be transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this paragraph, or (iii) of information that Member also has received from a source independent

of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality.

7.02. **Specific Performance.** The Members acknowledge that breach of the provisions of paragraph 7.01 of this Agreement may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of paragraph 7.01 of this Agreement may be enforced by specific performance.

ARTICLE VIII MEETING OF MEMBERS

8.01 Meetings.

(a) A quorum shall be present at a meeting of Members if the holders of a Simple Majority are represented at the meeting in person or by proxy. With respect to any matter, including a Fundamental Business Transaction, other than a matter for which the affirmative vote of the holders of a specified portion of the Ownership Interests of all Members entitled to vote is required by the TBOC or this Agreement, the affirmative vote of a Simple Majority at a meeting of Members at which a quorum is present shall be the act of the Members, except as provided by paragraph 8.01(b) or by another specific provision in this Agreement.

(b) All meetings of the Members shall be held at the principal place of business of the Company or at such other place within or outside the State of Texas as shall be specified or fixed in the notices or waivers of notice thereof; provided that any or all Members may participate in any such meetings by means of conference telephone or similar communications equipment pursuant to paragraph 8.06 of this Agreement.

(c) Notwithstanding the other provisions of the Certificate of Formation or this Agreement, the chairman of the meeting or the holders of a Super Majority shall have the power to adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If such meeting is adjourned by the Members, such time and place shall be determined by a vote of the holders of a Super Majority. Upon the resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

(d) An annual meeting of the Members shall not be required.

(e) Special meetings of the Members for any proper purpose or purposes may be called at any time by the Member or the holders of at least ten percent of the Ownership Interests of all Members. If not otherwise stated in or fixed in accordance with the remaining provisions hereof, the record date for determining Members entitled to call a special meeting is the date any Member first signs the notice of that meeting. Only business within the purpose or purposes described in the notice (or waiver thereof) required by this Agreement may be conducted at a special meeting of the Members.

(f) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Member or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, any such notice shall be deemed to be given when deposited in the United States mail, addressed to the Member at his address on the voting list provided for in paragraph 8.02 of this Agreement, with postage thereon prepaid.

(g) The date on which notice of a meeting of Members is mailed or the date on which the resolution of the Member declaring a distribution is adopted, as the case may be, shall be the record date for the determination of the Members entitled to notice of or to vote at such meeting, including any adjournment thereof, or the Members entitled to receive such distribution.

(h) Notice of meetings may be given to Members by facsimile or electronic message (e-mail).

8.02 Voting List. The Member shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the Ownership Interests held by each. For a period of ten (10) days prior to such meeting, such list shall be kept on file at the registered office or principal place of business of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original membership records shall be prima-facie evidence as to who are the Members entitled to examine such list or transfer records or to vote at any meeting of Members. Failure to comply with the requirements of this paragraph shall not affect the validity of any action taken at the meeting.

8.03 Proxies. A Member may vote either in person or by proxy executed in writing by the Member. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall be treated as an execution in writing for purposes of this paragraph. Proxies for use at any meeting of Members or in connection with the taking of any action by written consent shall be filed with the Member, before or at the time of the meeting or execution of the written consent, as the case may be. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the Member, who shall decide all questions touching upon the qualification of voters, the validity of the proxies, and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the chairman of the meeting, in which event such inspector or inspectors shall decide all such questions. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Should a proxy designate two or more persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the Ownership Interests that are the subject of such proxy are to be voted with respect to such issue.

8.04 Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Member (or representative thereof) designated by a majority of the Member. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including the regulation of the manner of voting and the conduct of discussion.

8.05 Action by Unanimous Written Consent Without Meeting.

(a) Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, by the

written consent of the Members or committee members, as the case may be, having not fewer than the minimum percentage of votes that would be necessary to take the action at a meeting at which all Members or committee members entitled to vote on the action were present and voted. No written consent shall be effective to take the action that is the subject to the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the Company in the manner required by this paragraph, the signed consent or consents are delivered to the Company by delivery to its registered office, its principal place of business, or the Member. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Member. Every written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one or more counterparts. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this paragraph. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

(b) The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office, its principal place of business, or the Member. Delivery shall be by hand or by certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the Member.

(c) If any action by Members is taken by written consent, any articles or documents filed with the Secretary of State of Texas as a result of the taking of the action shall state, in lieu of any statement required by the TBOC concerning any vote of Members, that written consent has been given in accordance with the provisions of the TBOC and that any written notice required by the TBOC has been given.

8.06 Action by Telephone Conference or Other Remote Communications Technology
Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Or, another suitable electronic communications system may be used including video-conferencing technology or the Internet, but only if each member entitled to participate in the meeting consents to the meeting being held by means of that system and the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant. Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

8.07 Classes of Members; Voting. At an annual or special meeting called for that purpose, the Members may from time to time establish classes or groups of Members. One or more of the Members' groups or classes may have certain expressed relative rights, powers, and duties, including voting rights, to be established at the time when the classes or groups are created, with seniority granted to one or more class or group as designated by the Members.

ARTICLE IX OFFICERS

9.01 Qualification. The Member may, from time to time, designate one or more persons to be officers of the Company. No officer need be a resident of the State of Texas or a Member. Any officers so designated shall have such authority and perform such duties as the Member may,

from time to time, delegate to them. The Member may assign titles to particular officers. Unless the Member decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Member pursuant to this paragraph. Each officer shall hold office until his successor shall be duly designated and qualify for such office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company (other than Member) may be filled by the Member. Any number of offices may be held by the one person.

9.02. Compensation. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Member. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

9.03. Resignation. Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Member. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

9.04. Removal. Any officer may be removed as such, either with or without cause, by the Member whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the person so removed.

ARTICLE X INDEMNIFICATION

10.01 Right to Indemnification. Subject to the limitations and conditions as provided in this Article, each person who was or is made a party or is threatened to be made a party to or is involved in any Proceeding, or any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Member of the Company or while a Member of the Company is or was serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Company to the fullest extent permitted by the TBOC, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorney's fees) actually incurred by such person in connection with such Proceeding, and indemnification under this Article shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendments, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article could involve indemnification for negligence or under theories of strict liability.

10.02 Advance Payment. The right to indemnification conferred in this Article shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a person of the type entitled to be indemnified under paragraph 10.01 of this Agreement who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such person of his or her good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article or otherwise.

10.03 Indemnification of Officers, Employees and Agents. The Company, by adoption of a resolution of the Members, may indemnify and advance or reimburse expenses to an officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Members under this Article; and, the Company may indemnify and advance or reimburse expenses to persons who are not or were not a Member, officers, employees, or agents of the Company but who are or were serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person to the same extent that it may indemnify and advance expenses to Members under this Article.

10.04 Appearance as a Witness. Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Member in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

10.05 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Member or other person indemnified pursuant to paragraph 10.03 of this Agreement may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Formation or this Agreement, agreement, vote of disinterested Member or otherwise.

10.06 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is a Member or was serving as an officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under this Article.

10.07 Member Notification. To the extent required by law, any indemnification or advance of expenses to a Member in accordance with this Article shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the twelve month period immediately following the date of the indemnification or advance.

10.08 Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Member or any other person indemnified pursuant to this Article as to costs, charges, and expenses (including attorney's fees), judgments, fines and amounts paid in settlement with respect to any action, suit or Proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE XI TAXES

11.01 Tax Returns. The Members shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in paragraph 11.02 of this Agreement. Each Member shall furnish to the Members all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

11.02 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Company's fiscal year;
- (b) to adopt the cash method of accounting for keeping the Company's books and records;
- (c) if a distribution of Company property as described in Section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Internal Revenue Code, to adjust the basis of Company properties;
- (d) to elect to amortize the organizational expenses of the Company and the startup expenditures of the Company under Section 195 of the Internal Revenue Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Internal Revenue Code; and
- (e) any other election the Members may deem appropriate and in the best interest of the Members.

Either the Company or any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 subtitle A of the Internal Revenue Code or any similar provisions of applicable state law.

11.03 "Tax Matters Partner." A majority of the Members shall designate one Member that is a Member to be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Internal Revenue Code; or, if there is no Member that is a Member, the "tax matters partner" shall be a Member that is designated as such by a Simple Majority. Any Member who is designated "tax matters partner" shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Internal Revenue Code. Any Member who is designated "tax matters partner" shall inform each other Member of all significant matters that may come to its attention in its capacity as "tax matters partner" by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications

it may receive in that capacity. Any Member who is designated "tax matters partner" may not take action contemplated by Section 6222 through 6232 of the Internal Revenue Code without the consent of a Simple Majority, but this sentence does not authorize such Member (or any other Member) to take any action left to the determination of an individual Member under Sections 6222 through 6232 of the Internal Revenue Code.

ARTICLE XII BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

12.01 Maintenance of Books. The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members, and each committee of the Members. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the Capital Accounts of the Members shall be maintained in accordance with Article IV of this Agreement. The calendar year shall be the accounting year of the Company.

12.02 Accounts. The Members shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Members determine. The Members may not commingle the Company's funds with the funds of any Member; however, Company funds may be invested in a manner the same as or similar to the Members' investment of their own funds or investments by their Affiliates.

12.03 Annual Reports. On or before the 120th day following the end of each fiscal year during the term of the Company, the Members shall cause each Member to be furnished with a balance sheet, an income statement, and a statement of changes in Members' capital of the Company for, or as of the end of, that year certified by a recognized firm of certified public accountants. These financial statements must be prepared in accordance with accounting principles generally employed for cash-basis records consistently applied (except as therein noted) and must be accompanied by a report of the certified public accountants certifying the statements and stating that (a) their examination was made in accordance with generally accepted auditing standards and, in their opinion, the financial statements fairly present the financial position, financial results of operations, and changes in Members' capital in accordance with accounting principles generally employed for cash-basis records consistently applied (except as therein noted) and (b) in making the examination and reporting on the financial statements described above, nothing came to their attention that caused them to believe that (i) the income and revenues were not paid or credited in accordance with the financial and accounting provisions of this Agreement, (ii) the costs and expenses were not charged in accordance with the financial and accounting provisions of this Agreement, or (iii) the Members failed to comply in any material respect with the financial and accounting provisions of this Agreement, or if they do conclude that the Members so failed, specifying the nature and period of existence of the failure. The Member also may cause to be prepared or delivered such other reports as they may deem appropriate. The Company shall bear the costs of all these reports.

ARTICLE XIII TRANSFERS

13.01 Limited Right to Transfer. No Member or Assignee shall make any Transfer of all or any part of its Membership Interest, whether now owned or hereafter acquired, except (a) with the unanimous consent of the Members; (b) as provided by Article XIV of this Agreement; (c) as a Defaulting Member as provided by paragraph 15.01(f) of this Agreement; or (d) upon winding up or termination, as provided by paragraph 16.03 of this Agreement. Any attempted

Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void *ab initio*.

13.02 Rights of an Assignee.

(a) Unless and until an Assignee becomes a Substituted Member of the Company as provided in this Agreement, the Assignee shall be entitled only to (i) allocation of income, gain, loss, deduction, credit, or similar items, and to receive distributions to which the assignor is entitled to the extent these items were assigned, and (ii) reasonable information or account of transactions of the Company and to make reasonable inspection of the books and records of the Company. The Membership Interest of the Assignee shall not be considered in the voting requirements of the Company, and the Assignee shall have no right to participate in the operations or management of the Company.

(b) In the event that the Members make additional contributions to the Company which the Membership Interest is held by an Assignee, the Assignor Member and its Assignee shall be jointly and severally liable for the corresponding contribution in connection with the Membership Interest held by Assignee. If the Assignor Member or Assignee does not make such contribution in accordance with the provisions of this Agreement, then the Assignor Member and Assignee shall be treated as being in Default. In the event that one or more new Members are admitted into the Company, or one or more existing Members increase their Membership Interest, the Membership Interest of the Assignee may be correspondingly reduced and no consent or other action on the part of such Assignee shall be required.

13.03 Legal Opinion. For the right of a Member to transfer a Membership Interest or any part thereof or of any Person to be admitted to the Company in connection therewith to exist or be exercised, the Company must receive an opinion from legal counsel acceptable to the Member that states (a) the Transfer is exempt from registration under federal and state securities laws, (b) the Transfer will not cause the Company to be in violation of federal and state securities laws, (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury Regulations, and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury Regulations. The Members, however, may waive the requirements of this paragraph.

13.04 Admission as Substituted Member. An Assignee has the right to be admitted to the Company as a Substituted Member with the Ownership Interest and the Capital Commitment so transferred to such person, in the event that:

(a) the Member making such Transfer grants the Assignee the right to be so admitted;

(b) such Transfer is consented to in accordance with paragraph 13.01 of this Agreement; and

(c) a written, signed and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Member, and said instrument contains (i) the agreement by the Assignee to be bound by all of the terms and provisions of this Agreement, (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws,

regulations, and securities laws, (iii) the Ownership Interests and the Capital Commitments after the Transfer of the Member effecting the Transfer and the person to which the Membership Interest of part thereof is transferred (which together must total the Ownership Interest and the Capital Commitment of the Member effecting the Transfer before the Transfer) and (iv) the name, address and any other pertinent information necessary for amended Exhibit A and to make distributions.

13.05 Transfer to Existing Member. In the event of a Transfer to an existing Member, the existing Member shall be automatically deemed to be a Substituted Member.

13.06 Third Party Offer. In the event a Member desires to sell all or any portion of its Membership Interest to another person (other than an existing Member), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from a Third Party to purchase such Membership Interest, the selling Member shall promptly deliver a copy of the Third Party offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Ownership Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, then the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party offer.

13.07 Reasonable Expenses. The Member effecting a Transfer and the Substituted Member shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the admission of the Substituted Member (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in paragraph 13.03 of this Agreement) on or before the tenth (10th) day after the receipt by that person of the Company's invoice for the amount due. If payment is not made by the date due, the person owing the amount shall pay interest on the unpaid amount from the date due until paid at a rate per annum equal to the Default Interest Rate.

ARTICLE XIV BUYOUT OF MEMBERSHIP INTEREST

14.01 Termination of Marital Relationship.

(a) If the marital relationship of a Member is terminated by death or divorce and such Member does not succeed to all of such Member's spouse's community or separate interest, if any, in the Membership Interest (such spouse is referred to hereafter in this Article as the "Assignee Spouse"), either as outright owner of such Membership Interest or as a trustee of a trust holding such Membership Interest, whether or not such Member is a beneficiary of such trust, then such Member shall have the option to purchase at Fair Value (determined as of the date of the death or divorce of the Member) the Assignee Spouse's interest in the Membership Interest to which such Member does not succeed. Such option must be exercised within ninety (90) days after the death of or the Member's divorce from the Assignee Spouse. Should the Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest at Fair Value for a period of ninety (90) days after the lapse of the initial 90-day period.

(b) Any Membership Interest of the Company held by a Member as a trustee of a trust as a result of the death of or the Member's divorce from the Assignee Spouse shall be treated as owned by such Member for purposes of this agreement. If such Member ceases to act as trustee of such trust for any reason, then such Member shall have the option to purchase all of the Membership Interest at Fair Value held in such trust. Such option must be exercised within ninety (90) days after such Member ceases to act as trustee of such trust. Should such Member fail to exercise such option within such 90-day period, then the Company shall have the option to purchase such Membership Interest for a period of ninety (90) days after the lapse of the initial 90-day period.

14.02 Death of Member. Commencing upon the death of a Member, the surviving Members shall for a period of ninety (90) days have the option to purchase all or any portion of the deceased Member's Membership Interest at Fair Value (determined as of the date of the death of the Member); provided, however, the exercise of said option shall require the approval of the unanimous consent of the Members. Upon the expiration of ninety (90) days after the death of a Member, the Company shall be obligated to purchase all, and not less than all, of the deceased Member's Membership Interest at Fair Value which the surviving Members do not elect to purchase pursuant to the option granted in the preceding sentence. The Assignee (which may include spouse and executors or administrators of the deceased Member) shall sell all of the deceased Member's Membership Interest to the Company and/or the other Members in accordance with the option or obligation established by this paragraph.

14.03 Bankruptcy of Member. If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Member to the Bankrupt Member (or its representative) at any time prior to the one hundred eightieth (180th) day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to purchase all or any portion of the Bankrupt Member's Membership Interest at Fair Value (determined as of the date that notice of the exercise of such option is given by the Members; provided, however, the exercise of said option shall require the approval of the unanimous consent of the Member. In the event that notice of the exercise of such option is given by the Members to the Bankrupt Member (or its representative), the Bankrupt Member shall sell its interest to the Company as provided by this Article.

14.04 Insufficient Surplus. If the Company shall not have sufficient surplus to permit it lawfully to purchase the Membership Interest under paragraph 14.01, 14.02 or 14.03 of this Agreement at the time of the closing, the other Members may take such action to vote their respective Membership Interests to reduce the capital of the Company or to take such other steps as may be appropriate or necessary in order to enable the Company lawfully to purchase such Membership Interest.

14.05 Option by Other Members. If the Company fails or declines to exercise an option to purchase a Membership Interest of a Member as provided by this Agreement within the period of time specified for such option, then the other Members shall have the option for a period of ninety (90) days thereafter to purchase such Membership Interest in such proportions as they mutually agree or in proportion to their respective Ownership Interests for the same price and upon the same terms available to the Company.

14.06 Exercise of Option. Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise such option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped

and addressed to the last known address of the selling party.

14.07 Determination of Fair Value. The "Fair Value" of a Membership Interest shall be the amount that would be distributable to the Member holding such interest in the event that the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests pursuant to this Agreement. In the event that the Fair Value of a Membership Interest is to be determined under this Agreement, the Member shall select a qualified independent appraiser to make such determination, and the Member shall make the books and records available to the appraiser for such purpose. The determination of Fair Value made by such appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

14.08 Fees and Expenses of Appraiser . In the case of a purchase and sale of Membership Interest under paragraph 14.01 or 14.02 of this Agreement (in the event of death or divorce of a Member), the fees and expenses of such appraiser shall be paid by the Company. In the case of a purchase and sale of Membership Interest under paragraph 14.03 or 15.01 (in the event of the bankruptcy or default of a Member), the fees and expenses of such appraiser shall be paid by the Bankrupt Member or Defaulting Member, by deducting at closing such fees and expenses from the purchase price to be paid to such Bankrupt Member or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of such appraiser shall be shared equally by the purchaser and seller.

14.09 Right to Withdraw Option. In the event that a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by paragraph 14.07 of this Agreement, such Member may elect to terminate its right to purchase within fifteen (15) days following its receipt of the determination of Fair Value, by delivery of written notice to the Company and to the Assignee. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Ownership Interests.

14.10 Terms of Purchase.

(a) The closing date for any sale and purchase made pursuant to this Article shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party, or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.

(b) Payment of the purchase price for a Membership Interest may be made by the Company and/or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing, and (ii) the balance of the purchase price, bearing interest at the General Interest Rate determined on the date of closing, to be paid in twenty-four (24) equal monthly installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of such obligation at any time or times in advance of maturity without penalty. In the event that the Company becomes a party to a Fundamental Business Transaction, such obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to such transaction.

(c) At the closing, the person selling the Membership Interest will transfer the Membership Interest free and clear of any liens or encumbrances, other than those which may have been created to secure any indebtedness or obligations of the Company.

(d) In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Assignee, or its representative shall constitute complete release, liquidation and satisfaction of all the rights and interest of the selling Member, Assignee, or its representative (and of all persons claiming by, through, or under the selling Member, Assignee, or its representative) in and in respect of the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members. The parties shall perform such actions and execute such documents that may be reasonably necessary to effectuate and evidence such purchase and sale, and release as provided by this paragraph.

ARTICLE XV DEFAULT OF A MEMBER

15.01 Failure to Contribute. If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Agreement, the Company may exercise, on notice to that Member (the "Defaulting Member"), one or more of the following remedies:

(a) taking such action (including, without limitation, court proceedings) as the Member may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting Member's Capital Contribution that is in default, together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Defaulting Member;

(b) permitting the other Members in proportion to their Ownership Interests or in such other proportions as they may agree (the "Lending Member," whether one or more), to advance the portion of the Defaulting Member's Capital Contribution that is in default, with the following results:

(i) the sum advanced constitutes a loan from the Lending Member to the Defaulting Member and a Capital Contribution of that sum to the Company by the Defaulting Member pursuant to the applicable provisions of this Agreement,

(ii) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member,

(iii) the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member,

(iv) all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after termination of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal),

(v) the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in paragraph 15.02 of this Agreement, and

(vi) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member;

(c) exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas;

(d) reducing the Defaulting Member's Membership Interest or other interest in the Company;

(e) subordination of the Defaulting Member's Membership Interest to the nondefaulting Member;

(f) a forced sale of the Defaulting Member's Membership Interest at Fair Value and upon the terms of purchase as provided in Article XIV;

(g) forfeiture of the Defaulting Member's Membership Interest; or

(h) exercising any other rights and remedies available at law or in equity.

15.02 Security. Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Defaulting Member under this Article, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Defaulting Member pursuant to paragraph 15.01(b) of this Agreement, a security interest in, and a general lien on its Membership Interest and the proceeds thereof, all under the Uniform Commercial Code of the State of Texas. It is expressly agreed that the security interest created thereby shall be governed by Chapter 8 of the Uniform Commercial Code of the State of Texas. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Texas with respect to the security interest granted in this Article. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Member or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article. At the option of the Member or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

15.03 Compromise or Release. The obligation of a Defaulting Member or its legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Defaulting Member in violation of the TBOC or this Agreement may be compromised or released only with the approval of the unanimous consent of the Member. Notwithstanding the compromise or release, a creditor of the Company who extends credit or otherwise acts in reasonable reliance on that obligation, after the Member signs a writing that reflects the obligation and before the writing is amended or canceled to reflect

the compromise or release, may enforce the original obligation.

15.04 Expulsion. A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) if that Member (a) has willfully violated any provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, or (c) engaged in wrongful conduct that adversely and materially affects the business or operation of the Company. Such a Member shall be considered a Defaulting Member, and the Company or other Members may also exercise any one or more of the remedies provided for in Article 15.01. The Company may offset any damages to the Company or its Members occasioned by the misconduct of the expelled Member against any amounts distributable or otherwise payable by the Company to the expelled Member.

ARTICLE XVI WINDING UP AND TERMINATION

16.01 Event Requiring Termination. The Company shall begin to wind up its affairs upon the first of the following to occur:

(a) the execution of an instrument approving the termination of the Company by a Simple Majority of the Members;

(b) the occurrence of any event that terminates the continued membership of the last remaining Member of the Company; provided, however, that the Company is not dissolved if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member agrees to cancel the event requiring winding up, to continue the Company and to become a Member, or to designate another person who agrees to become a Member, as of the date of termination of the membership of the last remaining Member;

(c) entry of a decree of judicial dissolution of the Company;

(d) the occurrence of a nonwaivable event under the terms of the TBOC which requires the Company to be terminated; or

(e) by the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

16.02 Business May Be Continued. Except as provided in paragraph 16.01([Bankruptcy Dissolution as Exception]) of this Agreement:

(a) an event that requires the winding up of the Company's business shall not terminate the Company if, no later than one year after the date of the event, the Members unanimously consent to cancel the event requiring winding up.

(b) the expiration of a period of duration that requires the winding up of the Company's business shall not terminate the Company if, no later than three years after the date the period of duration expires, the Members unanimously consent to amend the Company's Certificate of Formation and this Agreement to extend the Company's period of duration.

16.03 Purchase of Former Member's Membership Interest. Upon an event requiring winding up as provided in 16.01 of this Agreement, the Company's books shall be closed upon the date of such event, so as to determine the Former Member's Membership Interest value on the date ending all of the Former Member's financial interest in the Company. Within one hundred eighty (180) days of such event, the Company shall purchase the Former Member's Membership Interest at Fair Value (as determined by paragraph 14.07 of this Agreement), upon terms of purchase as provided in Article XIV of this Agreement.

16.04 Liquidation. As soon as possible following an event requiring termination of the Company, the Member shall act as liquidator or may appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the TBOC. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Member. The steps to be accomplished by the liquidator are as follows:

(a) as promptly as possible after such event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the termination occurs or the final liquidation is completed, as applicable;

(b) the liquidator shall cause the notice described in Section 11.052 of the TBOC to be delivered to each known claimant against the Company;

(c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in paragraph 4.04 of this Agreement) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(d) all remaining assets of the Company shall be distributed to the Members as follows:

(i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;

(ii) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(iii) Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the company occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this paragraph. Upon completion of all distributions to the Member, such distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

16.05 Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all Members in proportion to their respective Ownership Interests, upon termination of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

16.06 Certificate of Termination. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Member (or such other person or persons as the TBOC may require or permit) shall execute, acknowledge and cause to be filed a Certificate of Termination, at which time the Company shall cease to exist as a limited liability company.

ARTICLE XVII AMENDMENT OR MODIFICATION

17.01 Amendment or Modification. This Agreement may be amended or modified from time to time only with a written instrument executed (a) with the unanimous consent of the Members or (b) by a Super Majority of the Members.

17.02 Special Provisions for Certain Amendments or Modifications.

(a) An amendment or modification reducing a Member's Ownership Interest or increasing its Capital Commitment (other than to reflect changes otherwise provided by this Agreement) is effective only with that Member's consent.

(b) An amendment or modification reducing the required Ownership Interest or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Ownership Interest or other measure theretofore required.

(c) An amendment to establish the relative rights and preferences of the Membership Interests of any class or series may be made by a committee of Members, within the authority of Members or otherwise provided in the Certificate of Formation, the TBOC, or resolutions by Members forming the committee.

(d) An amendment or modification made solely to reflect the admission or withdrawal of a Member (such as to Exhibit A) need not be approved by any Member if the requirements set forth in this Agreement with respect to the admission or withdrawal of the Member are otherwise satisfied.

ARTICLE XVIII GENERAL PROVISIONS

18.01 Construction. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. In the event there is only one Member, then references to Members in the plural should be construed as singular; likewise, in the event there is only one Member, then references to Members in the plural should also be construed as singular.

18.02 Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

18.03 Notices. Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the person. All notices, requests, and consents to be sent to a Member must be sent to or made at the addresses given for that Member on Exhibit A or such other address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company or the Member must be given to the Member at the following address:

Glen B. Marecek and Mary C. Marecek
P. O. Box 222
Midkiff, Texas 79755

Mary Cravens Chamberlain Marecek, as Trustee
of the Mary Cravens Chamberlain 1995 Trust
P. O. Box 222
Midkiff, Texas 79755

Whenever any notice is required to be given by law, the Certificate of Formation or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

18.04 Entire Agreement; Supersedes Other Agreements. This Agreement includes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

18.05 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any person in the performance by that person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

18.06 Binding Effect. Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. However, unless and until properly admitted as a Member, no Assignee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the TBOC to assignees.

18.07 Governing Law. THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

18.08 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

18.09 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

18.10 Waiver of Certain Rights. Each Member irrevocably waives any right it may have to maintain any action for dissolution of the Company or for partition of the property of the Company.

18.11 Indemnification. To the fullest extent permitted by law, each Member shall indemnify the Company. Each Member shall hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

18.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same instrument.

ARTICLE XIX NOTICES AND DISCLOSURES

19.01 Compliance with Regulation D of the Securities Act of 1933. THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE MEMBER (WHICH, IN THE DISCRETION OF THE MEMBER, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE OWNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

19.02 Notice to Members. By executing this Agreement, each Member acknowledges that it has actual notice of all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in this Agreement, and all of the provisions of the Certificate of Formation. Except as otherwise expressly provided by law, each Member hereby agrees that this Agreement constitutes adequate notice of any notice requirement under Chapter 8 of the Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

19.03 Limitation of Liability. Pursuant to Article 581-1 *et seq.* of the Texas Revised Civil Statutes (the "Texas Securities Act"), the liability under the Texas Securities Act of a lawyer, accountant, consultant, the firm of any of the foregoing, and any other person engaged to provide services relating to an offering of securities of the Company ("Service Providers") is limited to a maximum of three times the fee paid by the Company or seller of the Company's securities, unless the trier of fact finds that such Service Provider engaged in intentional wrongdoing in providing the services. By executing this Agreement, each Member hereby acknowledges the disclosure contained in this paragraph.

IN WITNESS HEREOF, the Members have adopted and executed this Company Agreement as of the Effective Date.



GLEN B. MARECEK, Member



MARY C. MARECEK, Member

MARY CRAVENS CHAMBERLAIN 1995 TRUST,
Member

By: 

MARY CRAVENS CHAMBERLAIN MARECEK,
Trustee

EXHIBIT A
MEMBERS OF
MARECEK LAND & CATTLE, LLC

<u>Members' Names & Address</u>	<u>Membership & Ownership Interest</u>
Glen B. Marecek and Mary C. Marecek P. O. Box 222 Midkiff, Texas 79755	50%
Mary Cravens Chamberlain Marecek, as Trustee of the Mary Cravens Chamberlain 1995 Trust P. O. Box 222 Midkiff, Texas 79755	50%

TECHNICAL INFORMATION REPORT

WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicants are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please call Water Availability Division at (512) 239-4691 to schedule a meeting. Applicant attended a pre-application meeting with TCEQ Staff for this Application? Y / N **Yes** (If yes, date : 12/18/2020).

1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

State Water is: *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y / N **N**
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y / N **N** (If yes, indicate the Certificate or Permit number: _____)

*If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? **N/A** Y / N*

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N **N/A** (If yes, indicate the Term Certificate or Permit number: _____)

If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 - Environmental Information Worksheet**
- **Worksheet 6.0 - Water Conservation Information Worksheet**
- **Worksheet 7.0 - Accounting Plan Information Worksheet**
- **Worksheet 8.0 - Calculation of Fees**
- **Fees calculated on Worksheet 8.0 - see instructions Page. 34.**
- **Maps - See instructions Page. 15.**
- **Photographs - See instructions Page. 30.**

Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).

Additional Documents and Worksheets may be required (see within).

2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. ***If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. See instructions page. 6.***

Water Right (Certificate or Permit) number you are requesting to amend: 3936

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? **Y / N N** (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right
N/A	N/A

- a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? **Y / N N**

If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.

- b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)? **Y / N N**

If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.

- c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? **Y / N Y**

If yes, submit:

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: "Marshall Criteria"**

- d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? **Y / N Y**

If yes, submit: Worksheet 3.0 - Diversion Point Information Worksheet (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)

- e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? **Y / N N**

If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet (submit one worksheet for each impoundment or reservoir)

- f. Other - Applicant requests to change any provision of an authorization not mentioned above? **Y / N N** *If yes, call the Water Availability Division at (512) 239-4691 to discuss.*

Additionally, all amendments require:

- **Worksheet 8.0 - Calculation of Fees; and Fees calculated - see instructions Page.34**
- **Maps - See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

3. **Bed and Banks. TWC § 11.042 (Instructions, Page 13)**

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). Y/N **N**

If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:

- 1. Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
- 2. Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). Y / N **N**

If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). Y / N **N**

If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). Y / N **N**

If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.

****Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.***

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). Y / N **Y**

If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.

Worksheets and information:

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)
- **Worksheet 4.0 - Discharge Information Worksheet** (for each discharge point)
- **Worksheet 5.0 - Environmental Information Worksheet**
- **Worksheet 6.0 - Water Conservation Information Worksheet**
- **Worksheet 7.0 - Accounting Plan Information Worksheet**
- **Worksheet 8.0 - Calculation of Fees; and Fees calculated - see instructions Page. 34**
- **Maps - See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

4. General Information, Response Required for all Water Right Applications (Instructions, Page 15)

- a. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled "Addendum Regarding the State and Regional Water Plans":

The state and regional water plans generally do not address every possible change in

individual water rights. The application is consistent with the 2021 Region G. Water

Plan and the 2017 State Water Plan because there is nothing in the plans that conflict

with the application.

- b. Did the Applicant perform its own Water Availability Analysis? Y / N **N**

If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.

- c. Does the application include required Maps? (Instructions **Page. 15**) Y / N **Y**

Attachment A

WORKSHEET 1.0

Quantity, Purpose and Place of Use

1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre- feet) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>
2,200	Brazos Alluvium Aquifer	Agricultural Irrigation	3,925.384 Acres
			McLennan & Falls Counties

2,200 Total amount of water (in acre-feet) to be used annually (*include losses for Bed and Banks applications*) Southern Trinity Groundwater Conservation District (STGCD) Permit/Authorization for 2,200 acre-feet of groundwater production are included in Attachments B & C.

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

1. Location Information Regarding the Lands to be Irrigated

- i) Applicant proposes to irrigate a total of 3,925.384 acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of 4,074.139 acres in McLennan & Falls County, TX.
- ii) Location of land to be irrigated: In the See Attachment D Original Survey No. _____, Abstract No. _____.

A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.

If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.

Deeds-Attachment E; Consent to irrigate & consent to use of groundwater-Attachment F. Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.

Note:

- This page is for the proposed Bed & Banks authorization of 2,200 acre-feet of groundwater to be discharged into Castleman Creek for downstream diversion. This is not for a new appropriation of state surface water.

2. Amendments - Purpose or Place of Use (Instructions, Page. 12)

- a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre-feet)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**
2399.24	Agricultural Irrigation	Agricultural Irrigation	2,349.26 acres in McLennan County	2,817.224 acres in McLennan County 1,108.16 acres in Falls County

*If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."

**If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."

Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.

- b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:

i) Applicant proposes to irrigate a total of 3,925.384 acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of 4,074.139 acres in McLennan & Falls County, TX.

ii) Location of land to be irrigated: In the See Attachment D Original Survey No. _____, Abstract No. _____.

A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.

Deeds-Attachment E; Consent to irrigate-Attachment E.

Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.

Note: COA#12-3936 shall not be appurtenant to any new land being added for irrigation in this app.

- c. Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.
- d. See Worksheet 1.2, Marshall Criteria, and submit if required. Attachment G
- e. See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required. WCP Attachment H

WORKSHEET 1.1

INTERBASIN TRANSFERS, TWC § 11.085

Submit this worksheet for an application for a new or amended water right which requests to transfer State Water from its river basin of origin to use in a different river basin. A river basin is defined and designated by the Texas Water Development Board by rule pursuant to TWC § 16.051.

Applicant requests to transfer State Water to another river basin within the State? Y / N

1. Interbasin Transfer Request (Instructions, Page. 20)

- a. Provide the Basin of Origin. _____
- b. Provide the quantity of water to be transferred (acre-feet). _____
- c. Provide the Basin(s) and count(y/ies) where use will occur in the space below:

2. Exemptions (Instructions, Page. 20), TWC § 11.085(v)

Certain interbasin transfers are exempt from further requirements. Answer the following:

- a. The proposed transfer, which in combination with any existing transfers, totals less than 3,000 acre-feet of water per annum from the same water right. Y/N
- b. The proposed transfer is from a basin to an adjoining coastal basin? Y/N
- c. The proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin? Y/N
- d. The proposed transfer is for water that is imported from a source located wholly outside the boundaries of Texas, except water that is imported from a source located in the United Mexican States? Y/N

3. Interbasin Transfer Requirements (Instructions, Page. 20)

For each Interbasin Transfer request that is not exempt under any of the exemptions listed above Section 2, provide the following information in a supplemental attachment titled "Addendum to Worksheet 1.1, Interbasin Transfer":

- a. the contract price of the water to be transferred (if applicable) (also include a copy of the contract or adopted rate for contract water);
- b. a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- c. the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users (example - expert plans and/or reports documents may be provided to show the cost);

- d. describe the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years (the need can be identified in the most recently approved regional water plans. The state and regional water plans are available for download at this website: <http://www.twdb.texas.gov/waterplanning/swp/index.asp>);
- e. address the factors identified in the applicable most recently approved regional water plans which address the following:
 - (i) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;
 - (ii) the amount and purposes of use in the receiving basin for which water is needed;
 - (iii) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;
 - (iv) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;
 - (v) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and
 - (vi) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 in each basin (*if applicable*). If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;
- (f) proposed mitigation or compensation, if any, to the basin of origin by the applicant; and
- (g) the continued need to use the water for the purposes authorized under the existing Permit, Certified Filing, or Certificate of Adjudication, if an amendment to an existing water right is sought.

WORKSHEET 1.2 NOTICE. “THE MARSHALL CRITERIA”

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for such amendments which include changes in use, changes in place of use, or other non-substantive changes in a water right (such as certain amendments to special conditions or changes to off-channel storage). These criteria address whether the proposed amendment will impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is **not required** for Applications in the Rio Grande Basin requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is **not required** for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

1. The “Marshall Criteria” (Instructions, Page. 21)

Submit responses on a supplemental attachment titled “Marshall Criteria” in a manner that conforms to the paragraphs (a) - (g) below: [Attachment G](#)

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at:
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

WORKSHEET 2.0

Impoundment/Dam Information

This worksheet **is required** for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g. maps).

1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: _____
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: _____.
- c. The impoundment is on-channel _____ or off-channel _____ (mark one)
 1. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4691? **Y / N**
 2. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? **Y / N**
- d. Is the impoundment structure already constructed? **Y / N**
 - i. For already constructed **on-channel** structures:
 1. Date of Construction: _____
 2. Was it constructed to be an exempt structure under TWC § 11.142? **Y / N**
 - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? **Y / N**
 - b. If No, has the structure been issued a notice of violation by TCEQ? **Y / N**
 3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? **Y / N**
 - a. If yes, provide the Site No. _____ and watershed project name _____;
 - b. Authorization to close "ports" in the service spillway requested? **Y / N**
 - ii. For **any** proposed new structures or modifications to structures:
 1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? **Y / N**
Provide the date and the name of the Staff Person _____
 2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
 - a. No additional dam safety documents required with the Application. **Y / N**
 - b. Plans (with engineer's seal) for the structure required. **Y / N**
 - c. Engineer's signed and sealed hazard classification required. **Y / N**
 - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. **Y / N**

3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? **Y / N**

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level:_____.
2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option.
Applicant has calculated the drainage area. **Y/N**
If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4691).

2. Structure Location (Instructions, Page. 23)

a. On Watercourse (if on-channel) (USGS name):_____

b. Zip Code: _____

c. In the _____ Original Survey No. _____, Abstract No. _____, _____ County, Texas.

*** A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.**

****If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.**

d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude _____°N, Longitude _____°W.

***Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places**

di. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program):_____

dii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. **Y / N**

WORKSHEET 3.0

DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below): Diversion Reach #1 For:
-COA #12-3936 Surface Water
1. _____ Diversion Point No.
 2. #1 _____ Upstream Limit of Diversion Reach No.
 3. _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** 13.37 _____ cfs (cubic feet per second) or 6,000 _____ gpm (gallons per minute)
- c. Does this point share a diversion rate with other points? **Y / NY**
If yes, submit Maximum Combined Rate of Diversion for all points/reaches 13.37 _____ cfs or 6,000 _____ gpm
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / NN**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Existing
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / NN**

If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Unnamed Tributary of Castleman Creek, Tributary of Brazos River
- b. Zip Code: 76706
- c. Location of point: In the Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.453100°N, Longitude -97.043013°W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas Topo/GPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 1U
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below): Diversion Reach #1 For:
-COA #12-3936 Surface Water
1. _____ Diversion Point No.
 2. _____ Upstream Limit of Diversion Reach No.
 3. **#1** _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** 13.37 _____ cfs (cubic feet per second) or 6,000 _____ gpm (gallons per minute)
- c. Does this point share a diversion rate with other points? **Y / NY**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* 13.37 _____ cfs or 6,000 _____ gpm
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / NN**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Existing
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / NN**

If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Unnamed Tributary of Casleman Creek, Tributary of Brazos River
- b. Zip Code: 76706
- c. Location of point: In the Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.449400 °N, Longitude -97.037796 °W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 1D
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below):
- Diversion Reach #2 For:
 -COA #12-3936 Surface Water
 -Bed & Banks Groundwater
1. _____ Diversion Point No.
 2. **#2** _____ Upstream Limit of Diversion Reach No.
 3. _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** _____ cfs (cubic feet per second) or _____ gpm (gallons per minute) 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- c. Does this point share a diversion rate with other points? **Y / N Y**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* _____ cfs or _____ gpm 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N N**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Existing Reach (Amended Upstream Limit)
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N N**

If yes, the drainage area is _____ sq. miles.

(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Casleman Creek, Tributary of Brazos River
- b. Zip Code: 76706
- c. Location of point: In the I Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.436464 °N, Longitude -97.051232 °W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 2U
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0

DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below):
- Diversion Reach #2 For:
 -COA #12-3936 Surface Water
 -Bed & Banks Groundwater
1. _____ Diversion Point No.
 2. _____ Upstream Limit of Diversion Reach No.
 3. **#2** _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** _____ cfs (cubic feet per second) or _____ gpm (gallons per minute) 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- c. Does this point share a diversion rate with other points? **Y / NY**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* _____ cfs or _____ gpm 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N N**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Existing
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N N**

If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Castleman Creek/Brazos River Intersect
- b. Zip Code: 76706
- c. Location of point: In the I Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.453593 °N, Longitude -97.003332 °W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas Topo/GPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 2D
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below): Diversion Reach #3 For:
-COA #12-3936 Surface Water
1. _____ Diversion Point No.
 2. #3 _____ Upstream Limit of Diversion Reach No.
 3. _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** 13.37 _____ cfs (cubic feet per second) or 6,000 _____ gpm (gallons per minute)
- c. Does this point share a diversion rate with other points? **Y / NY**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* 13.37 _____ cfs or 6,000 _____ gpm
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / NN**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / NN**

If yes, the drainage area is _____ sq. miles.

(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Brazos River
- b. Zip Code: 76706
- c. Location of point: In the Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.466461°N, Longitude -97.038894°W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 3U
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below): Diversion Reach #3 For:
-COA #12-3936 Surface Water
1. _____ Diversion Point No.
 2. _____ Upstream Limit of Diversion Reach No.
 3. #3 _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** 13.37 _____ cfs (cubic feet per second) or 6,000 _____ gpm (gallons per minute)
- c. Does this point share a diversion rate with other points? **Y / N Y**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* 13.37 _____ cfs or 6,000 _____ gpm
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N N**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N N**

If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Castleman Creek/Brazos River Intersect
- b. Zip Code: 76706
- c. Location of point: In the I Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.453593°N, Longitude -97.003332°W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 3D
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below):
1. _____ Diversion Point No.
 2. **#4** _____ Upstream Limit of Diversion Reach No.
 3. _____ Downstream Limit of Diversion Reach No.

Diversion Reach #4 For:
 -COA #12-3936 Surface Water
 -Bed & Banks Groundwater
- b. Maximum Rate of Diversion for **this new point** _____ cfs (cubic feet per second) or _____ gpm (gallons per minute) 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- c. Does this point share a diversion rate with other points? **Y / NY**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* _____ cfs or _____ gpm 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N N**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N N**

If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Casileman Creek/Brazos River Intersect
- b. Zip Code: 76706
- c. Location of point: In the Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.453593 °N, Longitude -97.003332 °W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas Topo/GPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 4U
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

a. This Worksheet is to add new (select 1 of 3 below):

Diversion Reach #4 For:
-COA #12-3936 Surface Water
-Bed & Banks Groundwater

1. _____ Diversion Point No.
2. _____ Upstream Limit of Diversion Reach No.
3. #4 _____ Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point** _____ cfs (cubic feet per second) or _____ gpm (gallons per minute)

13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater

c. Does this point share a diversion rate with other points? **Y / NY**

*If yes, submit Maximum **Combined** Rate of Diversion for all*

points/reaches _____ cfs or _____ gpm 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater

d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / NN**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / NN**

If yes, the drainage area is _____ sq. miles.

(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Brazos River
- b. Zip Code: 76706
- c. Location of point: In the I Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.448725°N, Longitude -96.998245°W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 1.1--Identified as 4D
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0

DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below):
- Diversion Reach #5 For:
 -COA #12-3936 Surface Water
 -Bed & Banks Groundwater
1. _____ Diversion Point No.
 2. #5 _____ Upstream Limit of Diversion Reach No.
 3. _____ Downstream Limit of Diversion Reach No.
- b. Maximum Rate of Diversion for **this new point** _____ cfs (cubic feet per second) or _____ gpm (gallons per minute) 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- c. Does this point share a diversion rate with other points? **Y / NY**
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* _____ cfs or _____ gpm 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater
- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N N**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N N**

If yes, the drainage area is _____ sq. miles.
(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Erazos River
- b. Zip Code: 76685
- c. Location of point: In the Juan Jose Acosta Original Survey No. _____, Abstract No. 1, Falls County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.343231°N, Longitude -96.998507°W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 2--Identified as 5U
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).

1. Diversion Information (Instructions, Page. 24)

- a. This Worksheet is to add new (select 1 of 3 below):

Diversion Reach #5 For:
-COA #12-3936 Surface Water
-Bed & Banks Groundwater

1. _____ Diversion Point No.
2. _____ Upstream Limit of Diversion Reach No.
3. #5 _____ Downstream Limit of Diversion Reach No.

- b. Maximum Rate of Diversion for **this new point** _____ cfs (cubic feet per second) or _____ gpm (gallons per minute)

13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater

- c. Does this point share a diversion rate with other points? **Y / N Y**

*If yes, submit Maximum **Combined** Rate of Diversion for all*

points/reaches _____ cfs or _____ gpm 13.37 cfs, 6,000 gpm for COA 12-3936 Surface Water
17.82 cfs, 8,000 gpm for Bed & Banks Groundwater

- d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N N**

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

- e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
X	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

- f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N N**

If yes, the drainage area is _____ sq. miles.

(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Brazos River
- b. Zip Code: 76685
- c. Location of point: In the Juan Jose Acosta Original Survey No. _____, Abstract No. 1, Falls County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at:
Latitude 31.337414 °N, Longitude -97.000682 °W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program); Texas Topo!GPS Software
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38. Attachment A-Site Map 2--Identified as 5D
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 4.0 DISCHARGE INFORMATION

This worksheet required for any requested authorization to discharge water into a State Watercourse for conveyance and later withdrawal or in-place use. Worksheet 4.1 is also required for each Discharge point location requested. **Instructions Page. 26. Applicant is responsible for obtaining any separate water quality authorizations which may be required and for insuring compliance with TWC, Chapter 26 or any other applicable law.**

- a. The purpose of use for the water being discharged will be downstream diversion for agricultural irrigation.
- b. Provide the amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses _____% and explain the method of calculation: Losses could not be calculated.

Is the source of the discharged water return flows? Y / N **N** If yes, provide the following information:

1. The TPDES Permit Number(s). N/A (attach a copy of the **current** TPDES permit(s))
2. Applicant is the owner/holder of each TPDES permit listed above? Y / N **N/A**

PLEASE NOTE: If Applicant is not the discharger of the return flows, the application should be submitted under Section 1, New or Additional Appropriation of State Water, as a request for a new appropriation of state water. If Applicant is the discharger, then the application should be submitted under Section 3, Bed and Banks.

3. Monthly WWTP discharge data for the past 5 years in electronic format. (Attach and label as "Supplement to Worksheet 4.0").
 4. The percentage of return flows from groundwater N/A, surface water _____?
 5. If any percentage is surface water, provide the base water right number(s) N/A.
- c. Is the source of the water being discharged groundwater? Y / N **Y** If yes, provide the following information:
1. Source aquifer(s) from which water will be pumped: Brazos River Alluvium Aquifer
 2. Any 24 hour pump test for the well if one has been conducted. If the well has not been constructed, provide production information for wells in the same aquifer in the area of the application. See <http://www.twdb.texas.gov/groundwater/data/gwdbbrpt.asp>. Additionally, provide well numbers or identifiers N/A.
 3. Indicate how the groundwater will be conveyed to the stream or reservoir.
Groundwater will be conveyed into Castleman Creek via a sealed pvc or poly pipe.
 4. A copy of the groundwater well permit if it is located in a Groundwater Conservation District (GCD) or evidence that a groundwater well permit is not required.
Attachments B & C include the applicant's current groundwater permit & STGCD letter.
- ci. Is the source of the water being discharged a surface water supply contract? Y / N **N**
If yes, provide the signed contract(s).
- cii. Identify any other source of the water N/A

WORKSHEET 4.1

DISCHARGE POINT INFORMATION

This worksheet is required for **each** discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g. maps).

Instructions, Page 27. [Discharge Reach Upstream Limit](#)

For water discharged at this location provide:

- a. The amount of water that will be discharged at this point is a maximum of 2,200 acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of 17.82 cfs or 8,000 gpm.
- c. Name of Watercourse as shown on Official USGS maps: Castleman Creek
- d. Zip Code: 76706
- f. Location of point: In the I. Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.
- g. Point is at:
Latitude 31.436464 °N, Longitude -97.060226 °W.
****Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- h. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): Texas Topo!GPS Software

Map submitted must clearly identify each discharge point. See instructions Page. 15.

[Attachment A-Site Map 1.2--Identified as DU](#)

WORKSHEET 4.1 DISCHARGE POINT INFORMATION

This worksheet is required for **each** discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g. maps).

Instructions, Page 27. [Discharge Reach Downstream Limit](#)

For water discharged at this location provide:

- a. The amount of water that will be discharged at this point is a maximum of 2,200 acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of 17.82 cfs or 8,000 gpm.
- c. Name of Watercourse as shown on Official USGS maps: Castleman Creek
- d. Zip Code: 76706
- f. Location of point: In the J. Galindo Original Survey No. _____, Abstract No. 16, McLennan County, Texas.
- g. Point is at:
Latitude 31.444002 °N, Longitude -97.051323 °W.
****Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- h. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): Texas TopoGPS Software

Map submitted must clearly identify each discharge point. See instructions Page. 15.

[Attachment A-Site Map 1.2--Identified as DD](#)

WORKSHEET 5.0 ENVIRONMENTAL INFORMATION

This worksheet is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins. The worksheet is also required in all basins for requests to change a diversion point, applications using an alternate source of water, and bed and banks applications. **Instructions, Page 28.**

I. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location), For: Unnamed Tributary to Castleman Creek & Castleman Creek.

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: _____

Other, specify: _____

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners

Personal observation

Other, specify: _____

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

- Wilderness: outstanding natural beauty; usually wooded or ungrazed area; water clarity exceptional
- Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
- Common Setting: not offensive; developed but uncluttered; water may be colored or turbid
- Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

- Primary contact recreation (swimming or direct contact with water)
- Secondary contact recreation (fishing, canoeing, or limited contact with water)
- Non-contact recreation

Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the map submitted with the application indicating the location of the photograph and the direction of the shot. [Attachment I](#)
2. Measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on the new diversion structure). [1/4" mesh screens on all diversion pipes.](#)
3. If the application includes a proposed reservoir, also include:
 - i. A brief description of the area that will be inundated by the reservoir.
 - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
 - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

2. Alternate Sources of Water and/or Bed and Banks Applications

For all bed and banks applications:

- a. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on the new diversion structure). [1/4" mesh screens will be used on all diversion pipes.](#)

- b. An assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements. Discharge and diversion will occur simultaneously therefore no change is anticipated to quantity or quality of flows.

If the alternate source is treated return flows, provide the TPDES permit number N/A

If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:

- a. Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Analysis for both samples of pit/well groundwater are included-Attachment J

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L	107	120	2	Composite	12/18/2020
Chloride, mg/L	82.5	117	2	Composite	12/18/2020
Total Dissolved Solids, mg/L	447	544	2	composite	12/18/2020
pH, standard units	7.93	8.0	2	Composite	12/18/2020
Temperature*, degrees Celsius	19.05	19.6	2	Composite	12/18/2020

* Temperature must be measured onsite at the time the groundwater sample is collected.

- b. If groundwater will be used, provide the depth of the well ~40' and the name of the aquifer from which water is withdrawn Brazos River Alluvium Aquifer.

WORKSHEET 5.0 ENVIRONMENTAL INFORMATION

This worksheet is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins. The worksheet is also required in all basins for: requests to change a diversion point, applications using an alternate source of water, and bed and banks applications. **Instructions, Page 28.**

1. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location), [For: Brazos River](#)

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: _____

Other, specify: River

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners

Personal observation

Other, specify: _____

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

- Wilderness: outstanding natural beauty; usually wooded or ungrazed area; water clarity exceptional
- Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
- Common Setting: not offensive; developed but uncluttered; water may be colored or turbid
- Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

- Primary contact recreation (swimming or direct contact with water)
- Secondary contact recreation (fishing, canoeing, or limited contact with water)
- Non-contact recreation

Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the map submitted with the application indicating the location of the photograph and the direction of the shot. [Attachment I](#)
2. Measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on the new diversion structure). [1/4" mesh screens on all diversion pipes.](#)
3. If the application includes a proposed reservoir, also include:
 - i. A brief description of the area that will be inundated by the reservoir.
 - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
 - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

2. Alternate Sources of Water and/or Bed and Banks Applications

For all bed and banks applications:

- a. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on the new diversion structure).

- b. An assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements.

If the alternate source is treated return flows, provide the TPDES permit number _____

If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:

- a. Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L					
Chloride, mg/L					
Total Dissolved Solids, mg/L					
pH, standard units					
Temperature*, degrees Celsius					

* Temperature must be measured onsite at the time the groundwater sample is collected.

- b. If groundwater will be used, provide the depth of the well _____ and the name of the aquifer from which water is withdrawn _____.

WORKSHEET 6.0

Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.
Instructions, Page 31.

The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4691, or e-mail wras@tceq.texas.gov. The model plans can also be downloaded from the TCEQ webpage. Please use the most up-to-date plan documents available on the webpage.

1. Water Conservation Plans

- a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture - including irrigation, wholesale):
 1. Request for a new appropriation or use of State Water.
 2. Request to amend water right to increase appropriation of State Water.
 3. Request to amend water right to extend a term.
 4. Request to amend water right to change a place of use.
**does not apply to a request to expand irrigation acreage to adjacent tracts.*
 5. Request to amend water right to change the purpose of use.
**applicant need only address new uses.*
 6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water
**including return flows, contract water, or other State Water.*

- b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:
 1. ___ Municipal Use. See 30 TAC § 288.2. **
 2. ___ Industrial or Mining Use. See 30 TAC § 288.3.
 3. Agricultural Use, including irrigation. See 30 TAC § 288.4.
 4. ___ Wholesale Water Suppliers. See 30 TAC § 288.5. **

****If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y / N**

- c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed

appropriation; and evaluates any other feasible alternative to new water development.
See 30 TAC § 288.7.

Applicant has included this information in each applicable plan? Y / N Y

2. Drought Contingency Plans N/A

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above - indicate each that applies:
 1. ___Municipal Uses by public water suppliers. See 30 TAC § 288.20.
 2. ___Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
 3. ___Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc.* See 30 TAC § 288.30) Y / N

WORKSHEET 7.0

ACCOUNTING PLAN INFORMATION WORKSHEET

The following information provides guidance on when an Accounting Plan may be required for certain applications and if so, what information should be provided. An accounting plan can either be very simple such as keeping records of gage flows, discharges, and diversions; or, more complex depending on the requests in the application. Contact the Surface Water Availability Team at 512-239-4691 for information about accounting plan requirements, if any, for your application. **Instructions, Page 34.**

1. Is Accounting Plan Required

Accounting Plans are generally required:

- For applications that request authorization to divert large amounts of water from a single point where multiple diversion rates, priority dates, and water rights can also divert from that point;
- For applications for new major water supply reservoirs;
- For applications that amend a water right where an accounting plan is already required, if the amendment would require changes to the accounting plan;
- For applications with complex environmental flow requirements;
- For applications with an alternate source of water where the water is conveyed and diverted; and
- For reuse applications.

2. Accounting Plan Requirements

- a. A **text file** that includes:
 1. an introduction explaining the water rights and what they authorize;
 2. an explanation of the fields in the accounting plan spreadsheet including how they are calculated and the source of the data;
 3. for accounting plans that include multiple priority dates and authorizations, a section that discusses how water is accounted for by priority date and which water is subject to a priority call by whom; and
 4. Should provide a summary of all sources of water.
- b. A **spreadsheet** that includes:
 1. Basic daily data such as diversions, deliveries, compliance with any instream flow requirements, return flows discharged and diverted and reservoir content;
 2. Method for accounting for inflows if needed;
 3. Reporting of all water use from all authorizations, both existing and proposed;
 4. An accounting for all sources of water;
 5. An accounting of water by priority date;
 6. For bed and banks applications, the accounting plan must track the discharged water from the point of delivery to the final point of diversion;
 7. Accounting for conveyance losses;
 8. Evaporation losses if the water will be stored in or transported through a reservoir. Include changes in evaporation losses and a method for measuring reservoir content resulting from the discharge of additional water into the reservoir;
 9. An accounting for spills of other water added to the reservoir; and
 10. Calculation of the amount of drawdown resulting from diversion by junior rights or diversions of other water discharged into and then stored in the reservoir.

WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

1. NEW APPROPRIATION

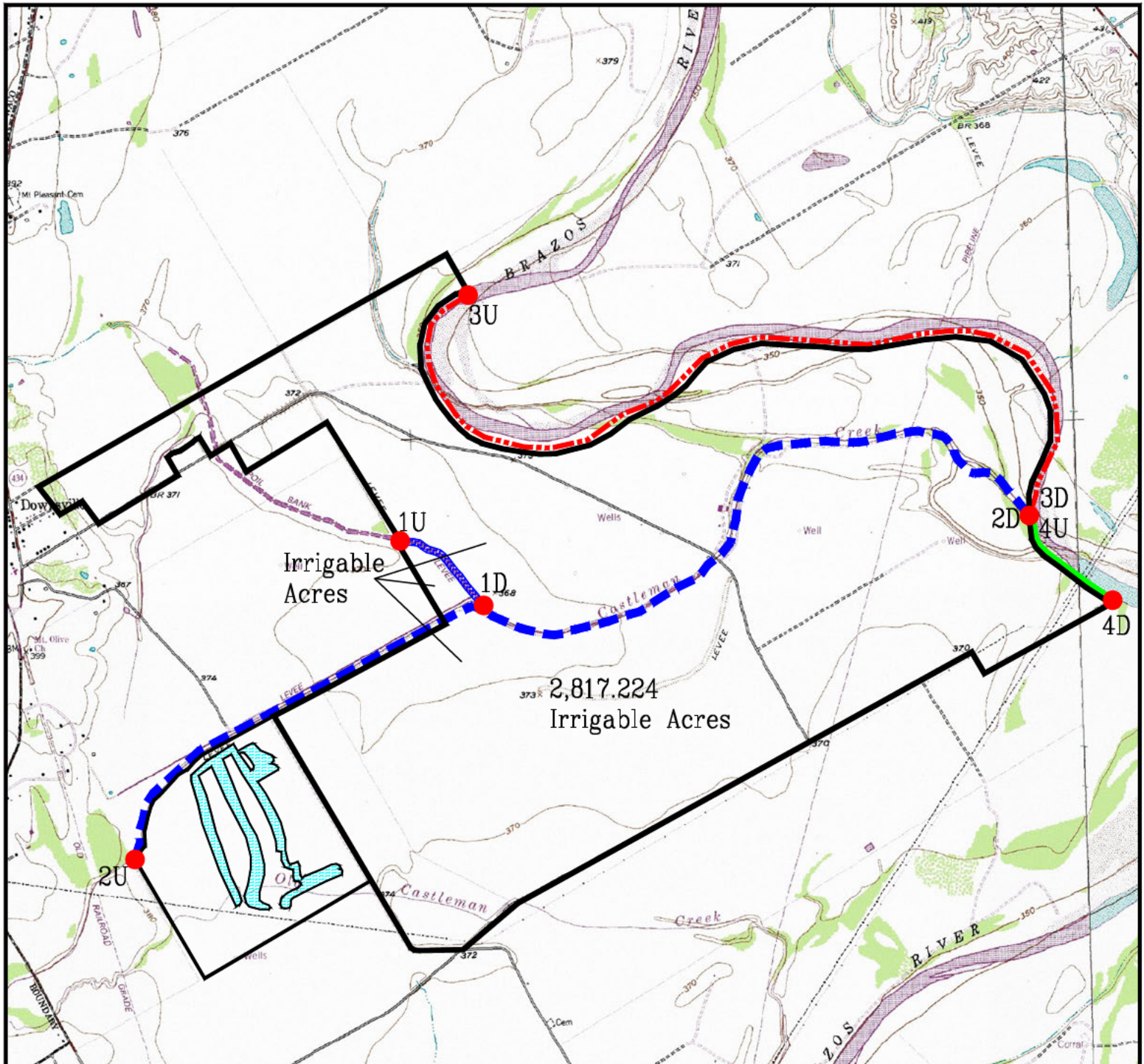
	Description	Amount (\$)
Filing Fee	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under Amount (\$) . <u>In Acre-Feet</u> a. Less than 100 \$100.00 b. 100 - 5,000 \$250.00 c. 5,001 - 10,000 \$500.00 d. 10,001 - 250,000 \$1,000.00 e. More than 250,000 \$2,000.00	
Recording Fee		\$25.00
Agriculture Use Fee	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x _____ Number of acres that will be irrigated with State Water. **	
Use Fee	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x _____ Maximum annual diversion of State Water in acre-feet. **	
Recreational Storage Fee	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x _____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	
Storage Fee	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x _____ acre-feet of State Water to be stored at normal max operating level.	
Mailed Notice	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4691.	
TOTAL		\$

2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
Filing Fee	Amendment: \$100 OR Sever and Combine: \$100 x ___of water rights to combine	\$100.00
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	
TOTAL INCLUDED		\$ 112.50

3. BED AND BANKS

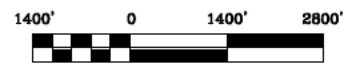
	Description	Amount (\$)
Filing Fee		\$100.00
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	
TOTAL INCLUDED		\$ 112.50



LEGEND:

- Denotes Property Boundary
- Denotes Diversion Reach 1
- Denotes Diversion Reach 2
- Denotes Diversion Reach 3
- Denotes Diversion Reach 4
- Denotes Diversion Reach Upstream (U) & Downstream (D) Limit
- Denotes Brazos Alluvium Groundwater Well/Pit

Map Generated 2/19/2021



SCALED AS SHOWN

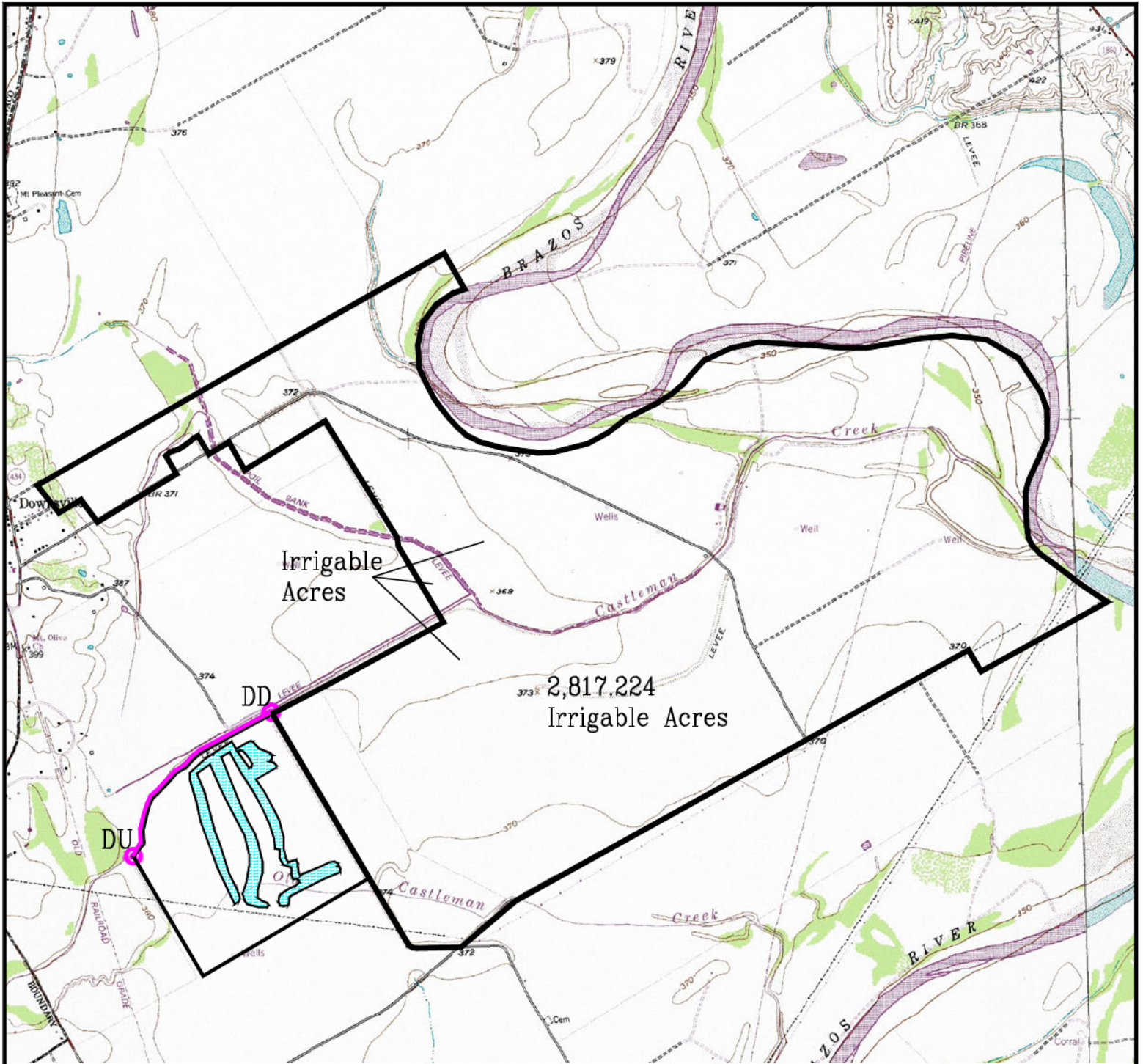
Source: USDA-NRCS. Geospatial Data Gateway. Available at: <http://datagateway.nrcs.usda.gov/>. Digital Raster Graphic County Mosaic by NRCS - Accessed April, 2015.

Glen & Mary Marecek
McLennan County
Waco, TX 76706

Attachment A
Site Map 1.1
McLennan County Property







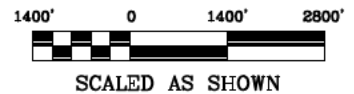
Enviro-Ag Engineering, Inc.
ENGINEERING CONSULTANTS
3404 Airway Blvd.
AMARILLO, TEXAS 79118
TEL (806) 353-6123 FAX (806) 353-4132



Map Generated 2/19/2021

LEGEND:

-  Denotes Property Boundary
-  Denotes Brazos Alluvium Groundwater Well/Pit
-  Denotes Discharge Reach 1
-  Denotes Discharge Reach Upstream (DU) & Downstream (DD) Limit



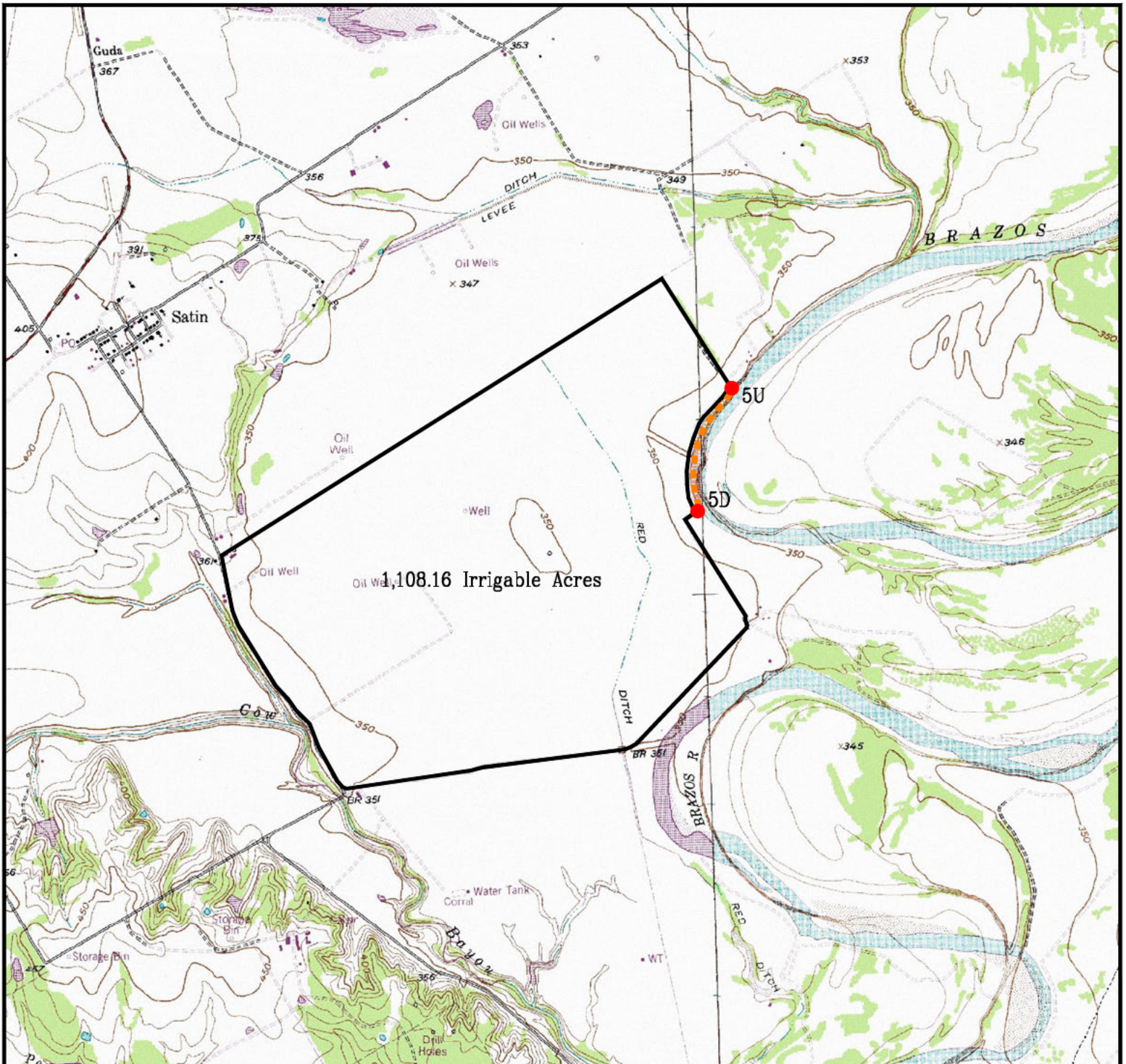
Source: USDA-NRCS. Geospatial Data Gateway. Available at: <http://datagateway.nrcs.usda.gov/>. Digital Raster Graphic County Mosaic by NRCS - Accessed April, 2015.

Glen & Mary Marecek
McLennan County
Waco, TX 76706

Attachment A
Site Map 1.2
McLennan County Property



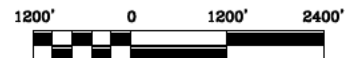
Enviro-Ag Engineering, Inc.
ENGINEERING CONSULTANTS
3404 Airway Blvd.
AMARILLO, TEXAS 79118
TEL (806) 353-6123 FAX (806) 353-4132



LEGEND:

- Denotes Property Boundary
- Denotes Diversion Reach 5
- Denotes Diversion Reach Upstream (U) & Downstream (D) Limit

Map Generated 2/19/2021



SCALED AS SHOWN

Source: USDA-NRCS. Geospatial Data Gateway. Available at: <http://datagateway.nrcs.usda.gov/>. Digital Raster Graphic County Mosaic by NRCS - Accessed May, 2019.

Glen & Mary Marecek
McLennan County
Waco, TX 76706

Attachment A
Site Map 2
Falls County Property



Enviro-Ag Engineering, Inc.
ENGINEERING CONSULTANTS
3404 Airway Blvd.
AMARILLO, TEXAS 79118
TEL (806) 353-6123 FAX (806) 353-4132



**AMENDED NON-HISTORIC USE PRODUCTION PERMIT
NHUPP-2015-014A**

This Amended Non-Historic Use Production Permit supersedes the Non-Historic Use Production Permit (NHUPP-2015-014) issued by the Board of Directors of the Southern Trinity Groundwater Conservation District (District) on May 28, 2015. The permit is amended consistent with a transfer approved by the Board of Directors of the District on March 25, 2021, authorizing a change to the ownership of the permit, the points of withdrawal and the rate of groundwater withdrawals.

THIS CERTIFIES THAT:

The Board of Directors of the District has APPROVED the amended permit as follows:

1 Permittees

Marecek Land & Cattle, LLC and CTEX Inc.
2966 Hacienda Wesley
Waco, Texas 76706

2 Permit Category

This permit is a **Non-Historic Use Production Permit**.

3 Permit Term

The permit expires December 31, 2033.

4 Groundwater Source

The source of groundwater is the **Brazos River Alluvium Aquifer**.

5 Annual Groundwater Withdrawal Amounts

Permittees may withdraw groundwater from the Brazos River Alluvium Aquifer for beneficial, non-wasteful use in a manner not to exceed the following volume: **2,200 acre-feet per calendar year**. This groundwater withdrawal amount has been calculated pursuant to Section 5.229 of the District's rules. The amount of groundwater withdrawal may be subject to proportional adjustment pursuant to Chapter 5, Subchapter B of the District's rules, as may be amended; and may be subject to cancellation or reduction pursuant to Section 5.235 of the District's rules.

6 Purpose of Use

Permittees may use Brazos River Alluvium Aquifer groundwater only for **agricultural irrigation purposes**.

7 Well Name(s), Location(s), and Maximum Rate of Withdrawal

Groundwater may only be withdrawn from the aquifer from the well(s) located at each of the location(s) and with a maximum rate of withdrawal(s) (flow rate) as follows:

<u>Name</u>	<u>Location (latitude/longitude)</u>	<u>Maximum Flow Rate (gpm)</u>
Well #1	31.454540 -97.029561	500 gpm
Well #2	31.455724 -97.032133	500 gpm
Well #3	31.456101 -97.024900	500 gpm
Well #4	31.459067 -97.020397	500 gpm
Well #5	31.450928 -97.031858	500 gpm
Well #6	31.447912 -97.041382	500 gpm
Well #7	31.446594 -97.044553	500 gpm
Well #8	31.446806 -97.039520	500 gpm
Well #9	31 27 14.7, -97.01761	300 gpm
Well #10	31.444686, -97.046931	300 gpm
Well #11	31.433855 -97.036358	300 gpm
Withdrawal Point #12	31.441830 -97.054880	1,033 gpm
Withdrawal Point #13	31.441804 -97.051195	1,033 gpm
Withdrawal Point #14	31.435615 -97.047134	1,034 gpm

8 Maximum Daily and Hourly Amounts of Withdrawal

If the Permittees have not exceeded the groundwater withdrawal amount as calculated pursuant to Section 4, the Permittees may withdraw in any given 24-hour period a maximum daily flow (gallons per day) of the sum of all flow rates (gpm) listed in Section 6 multiplied by 1,440.

9 Measurement of Amount of Groundwater Withdrawn

Permittees may only withdraw groundwater from a well that has an operating flow meter that meets the requirements of Chapter 8 of the District's rules and is listed in Section 6 of this permit.

10 Place of Use

Permittees may beneficially use Aquifer groundwater only within land owned by the Permittees that is contiguous with the location of the well identified in Section 4. Permittees must obtain a groundwater exportation permit from the District prior to the withdrawal of groundwater under the permit.

11 Well Construction, Operation, Maintenance, Closure

The well(s) identified in this permit shall be installed, equipped, operated, maintained, plugged, capped, or closed, as may be appropriate in accordance with the District's rules and all other applicable federal, state, and local laws, including by submitting a copy of a state plugging report to the District within 30 days after capping or plugging any well.

12 Water Conservation

Withdrawals of groundwater are required to be efficiently withdrawn and used in compliance with the District's rules and the District's management plan, as may be amended, and Permittees' water conservation plan as approved by the District, as may be applicable.

13 Conveyance to Place of Use

Water authorized by this permit to be produced must be conveyed to the place of use in a manner to prevent evaporation, channel loss by percolation, or waste. Water conveyed greater than a distance of one-half mile from the wellhead where produced must be conveyed through a pipeline.

14 Meters; Alternative Measuring Method

Permittees shall install, operate and maintain the meter or alternative measuring method on the wells identified in this permit in compliance with the District's rules and the manufacturer's instructions.

15 Reports

Permittees shall timely file all applicable reports with the District on forms prescribed by the District as required by the District's rules, as may be amended, the requirements of this permit, and other applicable law.

16 Fees

Permittees shall timely pay and remain current on the payment of all applicable fees to the District.

17 Interruption, Suspension, or Other Limitations Due to Drought

Permittees shall reduce water supply and consumption during times of drought in accordance with the District's rules and the District's management plan and Permittees' drought and water conservation plan approved by the District, as applicable.

18 Other Water Permits or Water Supply Contracts

Permittees shall only withdraw groundwater pursuant to this permit if the Permittees have made all reasonable efforts to fully use all water available to the Permittees pursuant to other water supply permits and/or water supply contracts, if any.

19 Groundwater Management Plan

Permittees shall withdraw and use groundwater only in accordance with the District's approved groundwater management plan, as may be amended.

20 Water Quality

Permittees shall use diligence to protect the water quality of groundwater in the District and shall comply with the District's water quality rules and take no action that pollutes or contributes to the pollution of groundwater in the District.

21 Transfers and Amendments

Permittees may transfer or amend this permit only in compliance with the District's rules.

22 Permit Review, Renewal or Extension Conditions

Permittees are subject to any review, renewal or extension conditions stated in the permit or the District's rules. This permit is subject to cancellation in accordance with Section 5.235 of the District's rules.

23 Change of Name, Address or Telephone Number

Permittees shall provide written notice to the District of any change of ownership, name of Permittees or the authorized representative, well operator, mailing address or telephone number within 30 days of such change.

24 Inspections by District

Any authorized officer, employee, agent or representative of the District shall have the right at all reasonable times to enter upon lands upon which a well may be located within the boundaries of the District, including the well(s) identified in Section 6 of this permit, for the purpose of inspecting or testing such wells, meters, pumps and the power units of a well or wells, collecting water samples, and making any other reasonable and necessary inspections and tests that may be required or necessary for the formulation or the enforcement of the permits, rules or orders of the District. Permittees have a duty to ensure that the well site is accessible to District representatives for inspection and to cooperate fully in any reasonable inspection of the well(s) and well site by District representatives.

25 Additional Conditions

24.1 This permit is issued subject to the requirements of: (1) Chapter 8821, Texas Special District Local Laws Code; (2) Chapter 36, Texas Water Code, as may be amended; and (3) the District's Rules, as may be amended.

24.2 This permit is subject to the standard permit conditions set forth in Section 5.233 of the District Rules.

24.3 No groundwater shall be withdrawn when the amount of the average available soil moisture as defined in the United States Natural Resources Conservation Service -

Engineering Handbook) of the upper 12” of the soil profile of the Permittees’ irrigated acreage is less than 60% of the maximum available soil moisture of the same soil profile.

26 Enforcement

The District retains the right to take any and all enforcement actions within its legal authority to enforce compliance with the terms and conditions of this permit.

27 Continuing Jurisdiction of District

This permit is issued subject to the continuing jurisdiction of and supervision by the District, and may be amended from time to time consistent with applicable law, including if the District learns that any of the information set forth in this permit is incorrect on the date issued.

28 Permit Recordation

Within 30 days of the date of issuance of this approved permit from the District, the District on behalf of the Permittees will record this permit with the County Clerk of every county in which the wells or place of use are located and provide a copy of the recorded permit to the Permittees. The cost of such recordings shall be assessed against the Permittees.

29 References to Law

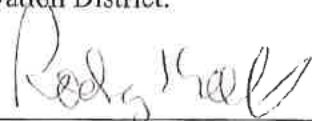
Any reference in this permit to a statute, rule, or other law of any kind, that exists on the date of issuance of the permit includes all subsequent amendments and additions thereto.

30 Other Matters Denied

All other matters requested in Permittees’ application that are not specifically granted by this permit are denied.

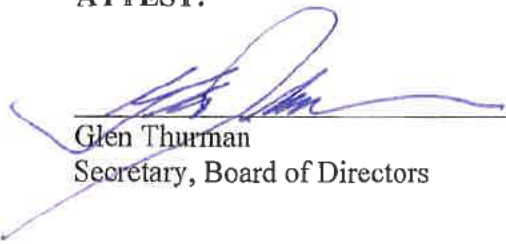
(continued on next page)

THIS PERMIT IS ISSUED, EXECUTED THIS 25th DAY of MARCH, 2021 by the Board of Directors of the Southern Trinity Groundwater Conservation District.



Rodney Kroll
President, Board of Directors

ATTEST:



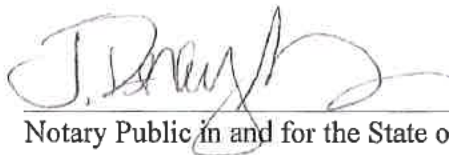
Glen Thurman
Secretary, Board of Directors

ACKNOWLEDGMENT

STATE OF TEXAS)

COUNTY OF MCLENNAN)

ON BEHALF OF THE DISTRICT, THIS PERMIT WAS ACKNOWLEDGED before me on March 25 2021, by Rodney Kroll, President, Board of Directors, Southern Trinity Groundwater Conservation District, a groundwater conservation district created pursuant to Article XVI, Section 59, Texas Constitution.



Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

Scooter Radcliffe, General Manager
Southern Trinity Groundwater Conservation District
P. O. Box 2205
Waco, Texas



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



J. A. "Andy" Harwell, County Clerk
03/31/2021 09:34 AM
Fee: \$0.00
2021011686 MISC
McLennan County, Texas

Attachment C



Southern Trinity Groundwater Conservation District

824 Washington Ave.
Waco, Texas 76701

P.O. Box 2205
Waco Texas

254.759.5610

76703



January 7, 2021

TCEQ
Water Availability Division, MC-160
P.O. Box 13087
Texas 78711-3087

Dear sir:

The Southern Trinity Groundwater Conservation District has jurisdiction on groundwater in McLennan County. Glen Marecek is purchasing property described as: being Tract 4: 75.45 Acres, Tract 18: 46.9 Acres, and Tracts 11 & 81: 372.47 Acres in the I. Golinda Survey, McLennan County, Texas for irrigation purposes.

This land has been used as a gravel pit operation previously. The water in the gravel pit is from the Brazos Alluvium Aquifer and is under the jurisdiction of the Southern Trinity Groundwater Conservation District.

Mr. Marecek has contacted the District regarding an additional permit for the production this Alluvium groundwater once he acquires the property.

Should you require or need additional information, please do not hesitate to contact the District office.

Sincerely,


Scooter Radcliffe
General Manager

Southern Trinity Groundwater Conservation District

Attachment D

TCEQ Form 10214C pg. 5 Section 1(ii) & pg. 6 Section 2(b)ii

Location of land to be irrigated:

(2,817.224 Acres) In the Ignacio Galindo Survey, Abstract 16, McLennan County, Texas

(1,108.16 Acres) In the Juan Jose Acosta Survey, Abstract 1, Falls County, Texas



DEED

2012039763

8 PGS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**ASSUMPTION WARRANTY DEED
WITH VENDOR'S LIEN**

Date: December 19, 2012, but effective December 31, 2012

Grantors: GLEN B. MARECEK and wife, MARY C. MARECEK, and MARY C. MARECEK, as Trustee of the MARY CRAVENS CHAMBERLAIN 1995 TRUST

Grantors' Mailing Address (include county): P. O. Box 222
Midkiff (Upton County), Texas 79755

Grantee: MARECEK LAND & CATTLE, LLC, a Texas Limited Liability Company

Grantee's Mailing Address (including county): P. O. Box 222
Midkiff (Upton County), Texas 79755

Consideration: Ten and No/100 Dollars and other good and valuable consideration and Grantee's assumption of and agreement to pay, according to the note's terms, the unpaid principal and earned interest of \$5,052,562.79 on the note in the original principal sum of \$5,000,000.00, dated September 14, 2012, executed by Glen B. Marecek and wife, Mary C. Marecek, and Mary C. Marecek (a/k/a Mary Cravens Chamberlain and Mary Cravens Chamberlain Marecek), Trustee of the Mary Cravens Chamberlain 1995 Trust, payable to the order of Capital Farm Credit, FLCA. The note is secured by an express vendor's lien and superior title retained in a deed dated September 14, 2012, recorded on September 17, 2012, in the Official Public Records of the McLennan County, Texas on September 17, 2012, and additionally secured by a deed of trust dated September 14, 2012, from Glen B. Marecek and wife, Mary C. Marecek, and Mary C. Marecek (a/k/a Mary Cravens Chamberlain and Mary Cravens Chamberlain Marecek), Trustee of the Mary Cravens Chamberlain 1995 Trust to Ben R. Novosad, Trustee, recorded on September 17, 2012, as Instrument No. 2012029295 in the Official Public Records of McLennan County, Texas. As further consideration, Grantee promises to keep and perform all the covenants and obligations of the Grantors named in that deed of trust and to indemnify, defend, and hold Grantors harmless from any loss, attorney's fees, expenses, or claims attributable to a breach or default of any provision of this assumption by Grantee. Grantors assign to Grantee any funds on deposit for payment of taxes and insurance premiums.

The first and superior vendor's lien against and superior title to the Property are retained in this deed to secure Grantee's assumption of the note. Grantee's assumption of the note is also secured by a deed of trust to secure assumption of even date, from Grantee to Paul H. Millican, Trustee. If default occurs in payment of the assumed note or in observance of any covenant or condition of any instrument securing the assumed note, Grantors and the holder of the assumed note each have the independent right to foreclose the vendor's lien. However, as between the two holders of the vendor's lien, Grantors' rights, title, and interest are subordinate to the rights, title, and interest of the holder of the assumed note. Cancellation of the assumed note and release of the liens securing it will release the liens securing the assumption, including the vendor's lien and deed of trust to secure assumption, without specific reference to them or the joinder of Grantors.

Property (including any improvements):

All that certain lot, tract or parcel of land being 2,558.992 acres out of the I. Galindo Grant on the west side of the Brazos River in McLennan County, Texas, SAVE AND EXCEPT, however, a 17.228 acre tract of land and a 0.79 acre tract of land, all more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

Reservations from and Exceptions to Conveyance and Warranty:

- (a) All those easements, right-of-way deeds and other exceptions, more particularly described in Exhibit "B" attached hereto and made a part hereof for all purposes.
- (b) One-half (1/2) of the royalty and the right to receive one-half (1/2) of the lease bonus which were reserved by Holy Land & Cattle, a Texas General comprised of Raymond Holy, Jr., Donald Holy, Daniel Holy and Thomas Holy Partnership ("Holy Land & Cattle") in that Warranty Deed with Vendor's Lien from Holy Land & Cattle as Grantors therein to Grantors herein, dated September 14, 2012, recorded in the Official Public Records of McLennan County, Texas on September 17, 2012 ("Holy Land & Cattle Deed").
- (c) 200 acre feet of water rights reserved by Holy Land & Cattle in that Holy Land & Cattle Deed.

Conveyance and Warranty:

Grantors, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and hold it to Grantee, Grantee's personal representatives, successors, or assigns forever. Grantors bind Grantors and Grantors' heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's personal representatives, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

A vendor's lien is retained in this deed which secures Grantee's assumption of the note described above, which assumption is also secured by a deed of trust to secure assumption of even date, from Grantee to Trustee.

When the context requires, singular nouns and pronouns include the plural.

Glen Marecek
GLEN B. MARECEK

Mary C Marecek
MARY C. MARECEK

MARY CRAVENS CHAMBERLAIN 1995 TRUST

By: Mary C Marecek TRUSTEE
MARY C. MARECEK, Trustee
(a/k/a Mary Cravens Chamberlain and
Mary Cravens Chamberlain Marecek)

(Acknowledgments)

THE STATE OF TEXAS §
 §
COUNTY OF McLENNAN §

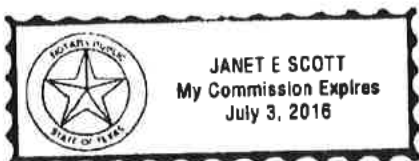
This instrument was acknowledged before me, the undersigned authority, on this ___ day of December, 2012, by **GLEN B. MARECEK**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the foregoing instrument.

Janet E Scott 12/19/12
NOTARY PUBLIC - State of Texas



STATE OF TEXAS §
 §
COUNTY OF McLENNAN §

This instrument was acknowledged before me, the undersigned authority, on this 19 day of December, 2012, by **MARY C. MARECEK**, individually, and as Trustee of the **MARY CRAVENS CHAMBERLAIN 1995 TRUST**, personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same with the requisite authority in the capacity so stated..



Janet E Scott

NOTARY PUBLIC - State of Texas

AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:

GOSSETT, HARRISON, MILLICAN
& STIPANOVIC, P.C.
P. O. Box 911
San Angelo, Texas 76902

Glen Marecek
P.O. Box 222
Midkiff, TX. 79755

Being 2,556.882 acres of land, more or less, cut of the I. Galindo Grant on the West side of the Brazos River in McLennan County, Texas, being the residue of the Northern Trust Company 2,619.86 acre tract described as the First Tract in a Deed from James M. Warner, et al, dated August 3, 1976 and recorded in Vol. 1231, Page 64 of the Deed Records of McLennan County, Texas, and all of the 60.888 acre tract conveyed to the Northern Trust Company by deed recorded in Vol. 1483, Page 192 of the McLennan County, Texas, Deed Records.

Beginning at an iron rod in the West Bank of the Brazos River at the Southeast corner of said Northern Trust Company tract.

Thence: Along the South line of said Northern Trust Company tract the following courses and distances: S 84 deg. 07 min. 48 sec. W 2,931.91 feet to an iron rod, N 24 deg. 21 min. 57 sec. W 490.1 feet to an iron rod in the center line of a road, and S 64 deg. 10 min. 55 sec. W, along the center line of said road, 10,191.13 feet to an iron rod being the Southwest corner of said Northern Trust Company tract.

Thence: Along the West line of said Northern Trust Company tract, the following courses and distances: N 69 deg. 04 min. 02 sec. W 2,184.31 feet, N 26 deg. 46 min. 15 sec. W 3,791.38 feet, N 64 deg. 39 min. 52 sec. E 2,715.83 feet, N 27 deg. 50 min. 55 sec. W 5111.17 feet, S 62 deg. W 2,288.1 feet, N 25 deg. 30 min. W 530.5 feet, S 87 deg. W 97.2 feet, S 42 deg. W 197.7 feet, S 58 deg. 45 min. W 188.8 feet, S 82 deg. 15 min. W 158.3 feet, S 52 deg. 45 W 141 feet, S 28 deg. E 485.9 feet, and S 62 deg. W 3,534.22 feet to an iron rod in the East right-of-way line of F. M. Road # 434.

Thence: Along said line of F. M. Road # 434, a curve to the left with a radius of 1,231.31 feet (Chord - N 01 deg. 54 min. 49 sec. W 224.74 feet), a distance of 225.05 feet to an iron rod.

Thence: N 07 deg. 09 min. 02 sec. W, continuing along said line of F. M. Road # 434, distance of 158.03 feet to an iron rod being the Northwest corner of said Northern Trust Company tract.

Thence: Along the North line of said Northern Trust Company tract the following courses and distances: N 62 deg. 48 min. 14 sec. E 578.47 feet, N 27 deg. 12 min. 48 sec. W 201.12 feet, N 61 deg. 49 min. 48 sec. E 5,821.39 feet, N 27 deg. 41 min. 58 sec. W 585.03 feet, and N 64 deg. 23 min. 25 sec. E 4,309.19 feet to a point.

Thence: S 25 deg. 57 min. 35 sec. E, a distance of 821.7 feet to a point in the West bank of the Brazos River.

Thence: Along the West bank of the Brazos River, the following courses and distances: S 64 deg. 47 min. 11 sec. W 262.29 feet, S 86 deg. 08 min. 10 sec. W 892.4 feet, S 38 deg. 45 min. 47 sec. W 383.1 feet, S 08 deg. 48 min. 32 sec. W 997.27 feet, S 22 deg. 18 min. 49 sec. E 268.85 feet, S 30 deg. 42 min. E 599.66 feet, S 42 deg. 11 min. 27 sec. E 599.44 feet, S 73 deg. 53 min. 01 sec. E 1,218.1 feet, S 89 deg. 31 min. 51 sec. E 468.35 feet, N 76 deg. 11 min. E 1,028.87 feet, N 83 deg. 48 min. 31 sec. E 868.43 feet, N 33 deg. 60 min. 41 sec. E 829.32 feet, N 77 deg. 31 min. 58 sec. E 781.27 feet, N 80 deg. 05 min. 06 sec. E 856.18 feet, S 85 deg. 34 min. 54 sec. E 983.58 feet, S 86 deg. 38 min. 44 sec. E 253.48 feet, N 72 deg. 53 min. 10 sec. E 401.08 feet, N 85 deg. 11 min. 08 sec. E 599.98 feet, N 82 deg. 53 min. 45 sec. E 918.8 feet, S 89 deg. 31 min. 55 sec. E 871.87 feet, S 65 deg. 35 min. 08 sec. E 294.33 feet, S 59 deg. 17 min. 45 sec. E 903.97 feet, S 25 deg. 46 min. 45 sec. E 455.77 feet, S 12 deg. 38 min. 35 sec. E 500.1 feet, S 02 deg. 29 min. 49 sec. W 1,061.58 feet, S 12 deg. 13 min. 69 sec. W 887.88 feet, S 19 deg. 08 min. 14 sec. E 488.05 feet, S 37 deg. 07 min. E 420.88 feet, S 42 deg. 52 min. 31 sec. E 838.75 feet, S 54 deg. 01 min. 15 sec. E 228.04 feet, S 56 deg. 04 min. 18 sec. E 369.47 feet and S 62 deg. 28 min. 15 sec. E 247.78 feet to the place of beginning.

Being the same property conveyed to Holy Land & Cattle, a Texas General Partnership by Warranty Deed recorded under Clerk's File No. 2004021361, Official Public Records, McLennan County, Texas.

SAVE AND EXCEPT a 17.228 acre tract of land conveyed by Lola Robinson to Mitchel Jager and wife, Anita Jager by Warranty Deed recorded in Vol. 1793 Page 527 Deed Records, McLennan County, Texas; and

SAVE AND EXCEPT a 0.79 acre tract of land conveyed by Daniel K. Holy et al to McLennan County by Warranty Deed recorded under Clerk's File No. 2002025462, Official Public Records, McLennan County, Texas.

EXHIBIT A, SOLO PAGE

Any portion of the property described herein which lies within the limits or boundaries of any public or private roadway and/or highway.

Any visible and apparent road or other easement crossing the land, whether public or private easement, the existence of which is not disclosed by the public records, including, but not limited to, existing utility lines and equipment in place.

Right of Way dated April 5, 1989, executed by Wesley Robinson and wife, Lola Robinson to Koch Refining Company, recorded in Vol. 1675 Page 627 Deed Records, McLennan County, Texas.

Right of Way Deed from E. P. Norwood to San Antonio and Aransas Pass Ry Co, dated August 3, 1886, and recorded in Vol. 83 Page 485 Deed Records, McLennan County, Texas.

Easement dated April 21, 1937, executed by Adele Steiner Fisher LaPrelle, et al to Texas Power & Light Company, recorded in Vol. 491 Page 319 Deed Records, McLennan County, Texas.

Easement dated April 17, 1941, executed by W. W. Hendrix et ux to Texas Power & Light Company, recorded in Vol. 490 Page 550 Deed Records, McLennan County, Texas.

Right of Way Deed from W. W. Hendrix et ux, to County of McLennan, dated October 27, 1948, and recorded in Vol. 620 Page 455 Deed Records, McLennan County, Texas.

Right of Way Deed from Annie Mae Warner et al to County of McLennan, dated October 28, 1948, and recorded in Vol. 621 Page 308 Deed Records, McLennan County, Texas.

Right of Way Deed from J. Talbot LaPrelle et al to County of McLennan, dated October 28, 1948, and recorded in Vol. 622 Page 191 Deed Records, McLennan County, Texas.

Right of Way Deed from Mrs. Steiner Booty Hurd to County of McLennan, dated November, 15, 1948, and recorded in Vol. 622 Page 353 Deed Records, McLennan County, Texas.

Easement dated March 13, 1950, executed by Estate of Mrs. Adele Steiner LaPrelle, Deceased to Texas Power & Light Company, recorded in Vol. 659 Page 159 Deed Records, McLennan County, Texas.

Easement dated March 11, 1952, executed by Mrs. Steiner B. Hurd to Texas Power & Light Company, recorded in Vol. 696 Page 456 Deed Records, McLennan County, Texas.

Easement dated March 10, 1952, executed by F. N. Howell, et al to Texas Power & Light Company of Dallas, Texas, and being recorded in Vol. 695 Page 456 Deed Records, McLennan County, Texas.

Easement dated July 29, 1952, executed by F. N. Howell et al to Texas Power & Light Company of Dallas, Texas, recorded in Vol. 705 Page 172 Deed Records, McLennan County, Texas.

Easement dated August 19, 1952, executed by Mrs. Steiner B. Hurd to Texas Power & Light Company, recorded in Vol. 705 Page 355 Deed Records, McLennan County, Texas.

Easement dated April 7, 1956, executed by James M. Warner to Texas Power & Light Company of Dallas, Texas, recorded in Vol. 827 Page 288 Deed Records, McLennan County, Texas.

Easement dated August 11, 1956, executed by James M. Warner to Texas Power & Light Company of Dallas, Texas, recorded in Vol. 829 Page 495 Deed Records, McLennan County, Texas.

Easement dated December 1, 1959, executed by James M. Warner to Texas Power & Light Company of Dallas, Texas, recorded in Vol. 860 Page 476 Deed Records, McLennan County, Texas.

EXHIBIT B, PAGE ONE OF THREE

Easement dated February 24, 1961, executed by James M. Warner to Texas Power & Light Company of Dallas, Texas, recorded in Vol. 878 Page 88 Deed Records, McLennan County, Texas.

Easement Modification Agreement dated February 8, 2008, executed by Holy Land & Cattle to Onor Electric Delivery Company, successor to Texas Power & Light Company, and being recorded under Clerk's File No. 2008094018, Official Public Records, McLennan County, Texas.

Easement dated May 11, 1936, executed by J. W. Price & Co. to Texas Power & Light Company, recorded in Vol. 452 Page 651 Deed Records, McLennan County, Texas.

Right of Way Deed from W. W. Hendrix to County of McLennan, dated October 27, 1948, and recorded in Vol. 620 Page 458 Deed Records, McLennan County, Texas.

Right of Way Deed from W. L. Dearen et al to County of McLennan, dated April 22, 1950, and recorded in Vol. 653 Page 40 Deed Records, McLennan County, Texas.

Easement dated May 18, 1950, executed by W. W. Hendrix et ux to Texas Power & Light Company, recorded in Vol. 658 Page 328 Deed Records, McLennan County, Texas.

Easement dated May 15, 1936, executed by C. S. Lankart to Texas Power & Light Company, recorded in Vol. 452 page 581 Deed Records, McLennan County, Texas.

Easement dated May 20, 1948, executed by C. S. Lankart to Texas Power & Light Company, recorded in Vol. 619 Page 174 Deed Records, McLennan County, Texas.

Easement dated May 20, 1948, executed by C. S. Lankart to Texas Power & Light Company, recorded in Vol. 619 Page 175 Deed Records, McLennan County, Texas.

Right of Way Deed from C. S. Lankart to McLennan County, dated October 27, 1948, and recorded in Vol. 620 Page 458 Deed Records, McLennan County, Texas.

Easement dated March 18, 1949, executed by C. S. Lankart to Texas Power & Light Company, recorded in Vol. 634 Page 138 Deed Records, McLennan County, Texas.

Right of Way Deed from C. S. Lankart to McLennan County, dated April 27, 1950, and recorded in Vol. 652 Page 555 Deed Records, McLennan County, Texas.

Easement dated May 13, 1950, executed by C. S. Lankart to Texas Power & Light Company, recorded in Vol. 658 Page 158 Deed Records, McLennan County, Texas.

Easement dated December 23, 1953, executed by C. S. Lankart to Texas Power & Light Company, recorded in Vol. 738 Page 115 Deed Records, McLennan County, Texas.

Easement dated March 16, 1961, executed by Edna Lankart to Texas Power & Light Company of Dallas, Texas and Southwestern Bell Telephone Company of St. Louis, Missouri, recorded in Vol. 883 Page 387 Deed Records, McLennan County, Texas.

Easement dated May 11, 1936, executed by J. A. Webb to Texas Power & Light Company, recorded in Vol. 453 Page 440 Deed Records, McLennan County, Texas.

Easement dated September 14, 1937, executed by Webb Bros. and Crunk et al to Southwestern Bell Telephone Company, recorded in Vol. 464 Page 302 Deed Records, McLennan County, Texas.

Easement dated August 12, 1947, executed by C. D. Crunk et ux to Texas Power & Light Company, recorded in Vol. 598 Page 519 Deed Records, McLennan County, Texas.

Easement dated November 1, 1969, executed by C. S. Lankart to Texas Power & Light Company of Dallas, Texas, and Southwestern Bell Telephone Company of St. Louis, Missouri, recorded in Vol. 1082 Page 119 Deed Records, McLennan County, Texas.

EXHIBIT B, PAGE TWO OF THREE

Easement dated December 2, 1948, executed by N. C. Degrate, Deceased to Texas Power & Light Company, recorded in Vol. 631 Page 121 Deed Records, McLennan County, Texas.

Easement dated May 13, 1949, executed by S. Degrate to Texas Power & Light Company, recorded in Vol. 642 Page 32 Deed Records, McLennan County, Texas.

Easement dated April 24, 1937, executed by A. W. Warner to Texas Power & Light Company, recorded in Vol. 480 Page 618 Deed Records, McLennan County, Texas.

Easement dated September 2, 1937, executed by A. W. Warner to Southwestern Bell Telephone Company, recorded in Vol 465 Page 78 Deed Records, McLennan County, Texas.

Easement dated January 7, 1941, executed by A. W. Warner to Texas Power & Light Company, recorded in Vol. 497 Page 285 Deed Records, McLennan County, Texas.

Easement dated September 12, 1944, executed by James Warner et al to Texas Power & Light Company, recorded in Vol. 525 page 50 Deed Records, McLennan County, Texas.

Easement dated April 8, 1947, executed by A. W. Warner to Texas Power & Light Company, recorded in Vol. 782 Page 171 Deed Records, McLennan County, Texas.

Easement dated March 25, 1952, executed by James Madison Warner et al to Texas Power & Light Company, recorded in Vol. 698 Page 86 Deed Records, McLennan County, Texas.

Easement dated March 4, 1966, executed by James M. Warner to The Castleman Creek Water Shed Association, recorded in Vol. 983 Page 395 Deed Records, McLennan County, Texas.

Easement dated March 4, 1966, executed by James M. Warner to The Castleman Creek Water Shed Association, recorded in Vol. 983 Page 396 Deed Records, McLennan County, Texas.

Easement dated January 19, 1966, executed by James M. Warner to The Castleman Creek Water Shed Association, recorded in Vol. 983 Page 398 Deed Records, McLennan County, Texas.

Easement dated January 19, 1966, executed by James M. Warner to Texas Power & Light Company, recorded in Vol. 988 Page 17 Deed Records, McLennan County, Texas.

Easement dated June 9, 1967, executed by James M. Warner et al to Texas Power & Light Company, recorded in Vol. 1009 Page 598 Deed Records, McLennan County, Texas.

Easement dated January 3, 1969, executed by James M. Warner to Texas Power & Light Company, recorded in Vol. 1048 Page 699 Deed Records, McLennan County, Texas.

Easement dated May 6, 1969, executed by James M. Warner to Elstone Fuel Company, recorded in Vol. 1050 Page 405 Deed Records, McLennan County, Texas.

Easement dated May 6, 1969, executed by James M. Warner to Elstone Fuel Company, recorded in Vol. 1050 Page 408 Deed Records, McLennan County, Texas.

Easement dated March 21, 1972, executed by James M. Warner to The Castleman Creek Water Shed Association, recorded in Vol. 1115 Page 79 Deed Records, McLennan County, Texas.

Easement dated April 28, 1970, executed by James M. Warner, Jr. to Texas Power & Light Company, recorded in Vol. 1142 Page 53 Deed Records, McLennan County, Texas.

Easement dated December 5, 1973, executed by James M. Warner to Texas Power & Light Company, recorded in Vol. 1170 Page 745 Deed Records, McLennan County, Texas.

Easement dated February 12, 1974, executed by James M. Warner to Texas Power & Light Company, recorded in Vol. 1181 Page 95 Deed Records, McLennan County, Texas.

Easement dated February 6, 1974, executed by James W. Warner to West Brazos Valley Supply Corp., recorded in Vol. 1188 Page 266 Deed Records, McLennan County, Texas.

EXHIBIT B, PAGE THREE OF THREE

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

J. A. Andy Harwell

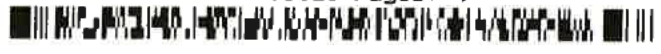
December 19, 2012 10:23:16 AM

2012039763

FEE: \$39.00

J. A. "Andy" Harwell County Clerk
McLennan County TEXAS

Webb
St. 2012



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §

§

COUNTY OF MCLENNAN §

§

Grant:

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, GLEN MARECEK and MARY MARECEK ("Grantors") have granted, sold and conveyed and by these presents do grant, sell and convey unto CTEX, LLC, a Texas limited liability company/limited partnership ("Grantee"), whose mailing address is 2966 Hacienda Wesley Rd., Waco, Texas 76706, all of Grantors' right, title and interest in and to the property described in Exhibit A, attached hereto.

Together with all rights, easements and appurtenances belonging or in anywise appertaining thereto, and all buildings and improvements situated thereon.

Grantee's interest is subject expressly to all zoning laws, ordinances, covenants, conditions, restrictions, rights-of-way, easements and rights now existing under any surface leases and oil and gas leases and all royalties, overriding royalties and other burdens presently of record covering and affecting the interests herein conveyed.

To have and to hold the Property unto Grantee, its heirs, personal representatives, successors and assigns forever; and Grantors do hereby bind themselves and their heirs, personal representatives, successors and assigns to warrant and forever defend the Property unto Grantee, its heirs, personal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantors, but not otherwise. This Special Warranty Deed is made with full rights of substitution and subrogation of Grantee, in and to all covenants and warranties of title heretofore given or made by others with respect to the property, or any part thereof, and Grantors hereby transfer and convey to Grantee all Grantors' rights under any and all such covenants and warranties of title that Grantors are entitled to enforce.

EXECUTED on the date acknowledged below, to be effective for all purposes as of the same date.

GRANTORS:

Glen Marecek
GLEN MARECEK

Mary Marecek
MARY MARECEK

STATE OF TEXAS

§
§
§

COUNTY OF MIDLAND

This instrument was acknowledged before me on this 8th day of January, ~~2019~~²⁰²¹ by Glen Marecek and Mary Marecek.

Notary Seal:

[Signature]
Notary Public, the State of Texas



EXHIBIT A

McLennan County, Texas

81.25 ACRE TRACT

Being an 81.25 acre tract of land in the Ignacio Galindo Survey, Abstract No. 16, McLennan County, Texas and being all of those certain tracts of land designated as First Tract and Fourth Tract described in a deed to Alan David Hall, et al, recorded in Volume 1668, Page 277 of the Deed Records of McLennan County, Texas (DRMCT), and to Teresa M. Hall by instrument of record in Document No. 2016001637 of the Official Public Records of McLennan County, Texas (OPRMCT). Said 81.25 acre tract being shown on attached plat and more particularly described by metes and bounds as follows:

BEGINNING at a set 1/2" iron rod with yellow cap stamped "RPLS 5345" at an old wood comer post at the occupied southwest comer of above mentioned First Tract, same being the southeast comer of a 1-1/2 acre tract of land to Edith L. Brooks (Document No. 2010012383 OPRMCT), in the north line of a 17.228 acre tract of land to Anita Sue Jager (Document No. 2014020333- OPRMCT);

THENCE along the occupied west line of said First Tract, same being the east line of said 1-1/2 acre tract, generally along a fence, North 35 degrees 32 minutes 47 seconds West, a distance of 146.89 feet to a found 1/2" iron rod at a 10" wood comer post at the southeast comer of a 0.4 acre tract of land to Paula Aburto (Document No. 199730277 OPRMCT);

THENCE along the occupied west line of said First Tract, same being the east line of said 0.4 acre tract, generally along a fence, North 35 degrees 42 minutes 29 seconds West, a distance of 100.05 feet to a found 1/2" iron rod at a chain-link fence comer post at a southeast comer of a 4-1/2 acre tract of land to Joe Mathews (1845/834 DRMCT);

THENCE along the occupied west line of said First Tract, same being the east line of said 4-1/2 acre tract, along a fence and prolongation thereof, North 34 degrees 53 minutes 26 seconds West, a distance of 463.83 feet to a set 1/2" iron rod with yellow cap stamped "RPLS 5345" in the south line of an 1817.37 acre tract of land to Charles W. Combs Trust (Document No. 2013001181- OPRMCT);

THENCE along the occupied north line of said First Tract and said Fourth Tract, same being the south line of said 1817.37 acre tract, generally along a fence as follows:

North 61 degrees 06 minutes 43 seconds East, a distance of 160.72 feet to a found 3/8" iron rod at a 6" wood brace post;

North 62 degrees 52 minutes 47 seconds East, a distance of 393.96 feet to a found 3/8" iron rod at a 6" wood brace post;

North 58 degrees 29 minutes 59 seconds East, a distance of 152.27 feet to a found

3/8" iron rod at a 6" wood brace post;

North 61 degrees 33 minutes 49 seconds East, a distance of 4831.69 feet to a found 3/8" iron rod at a 6" wood corner post at an exterior ell corner of a 2540.974 acre tract of land to Marecek Land & Cattle, LLC (Document No. 2012039763 OPRMCT);

THENCE along the east line of said First Tract and said Fourth Tract, same being a west line of said 2540.974 acre tract, South 25 degrees 31 minutes 53 seconds East, a distance of 585.55 feet to a found 1/2" iron rod at a tall 2" pipe post;

THENCE along the south line of said First Tract, same being a north line of said 2540.974 acre tract, the north line of a 3.7 acre tract of land to Stephanie Cutbirth by instrument of record in Document No. 201502033 (OPRMCT) and the north line of said 17.228 acre tract, South 60 degrees 16 minutes 52 seconds West, a distance of 5427.01 feet to the POINT OF BEGINNING, containing 81.25 acres of land.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



J. A. "Andy" Harwell, County Clerk
01/20/2021 09:58 AM
Fee: \$28.00
2021002242 DEED
McLennan County, Texas

EXECUTED on the date acknowledged below, to be effective for all purposes as of the same date.

GRANTORS:

Glen Marecek
GLEN MARECEK

Mary Marecek
MARY MARECEK

STATE OF TEXAS

§
§
§

COUNTY OF MIDLAND

This instrument was acknowledged before me on this *8th* day of *January*, ~~2019~~ *2021* by Glen Marecek and Mary Marecek.

Notary Seal:



[Signature]
Notary Public, the State of Texas

EXHIBIT A

McLennan County, Texas

25.00 ACRE TRACT

Being a 25.00 acre tract of land in the Ignacio Galindo Survey, Abstract No. 16, McLennan County, Texas and being all of that certain 25 acre tract of land designated as Second Tract in a deed to Alan David Hall, et al, recorded in Volume 1668, Page 277 of the Deed Records of McLennan County, Texas (DRMCT), also conveyed to Teresa M. Hall, recorded in Document No. 2016001637 of the Official Public Records of McLennan County, Texas (OPRMCT). Said 25.00 acre tract being shown on attached plat and more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2" iron rod with cap stamped "LETH3879" at the northwest corner of above mentioned 25 acre tract, same being the northeast corner of a 45.441 acre tract of land to Steve Cutbirth (Document No. 2007032775 OPRMCT), located in the apparent south right-of-way line of Hacienda Wesley, a gravel public road;

THENCE along the apparent south right-of-way line of Hacienda Wesley, North 60 degrees 08 minutes 09 seconds East, a distance of 1827.26 feet to a set 1/2" iron rod with yellow cap stamped "RPLS 5345" for the northeast corner of this, same being an interior ell corner of a 2540.974 acre tract of land to Marecek Land & Cattle, LLC (Document No. 2012039763 OPRMCT);

THENCE along the east line of said 25 acre tract, same being a west line of said 2540.974 acre tract, along or near the west toe of a turn row, South 29 degrees 20 minutes 45 seconds East, a distance of 596.98 feet to a set 1/2" iron rod with yellow cap stamped "RPLS 5345" at a found t-post for the northeast corner of an 80.72 acre tract of land willed to Mrs. Tom Spencer;

THENCE along the south line of said 25 acre tract, same being the north line of said 80.72 acre tract, South 60 degrees 11 minutes 46 seconds West, a distance of 1827.24 feet to a set 1/2" iron rod with yellow cap stamped "RPLS 5345" for the southwest corner of this, same being the southeast corner of said 45.441 acre tract;

THENCE along the common line of said 25 acre tract and said 45.441 acre tract, North 29 degrees 20 minutes 45 seconds West, a distance of 595.06 feet to the POINT OF BEGINNING, containing 25.00 acres of land.

All bearings recited herein are referenced to Geodetic North.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



J. A. "Andy" Harwell, County Clerk
01/20/2021 09:58 AM
Fee: \$24.00
2021002244 DEED
McLennan County, Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WARRANTY DEED WITH VENDOR'S LIEN

DATE: January 29, 2021

GRANTOR: HERSH PROPERTIES, LTD., A TEXAS LIMITED PARTNERSHIP AND JUSTIN LAND LLC, A TEXAS LIMITED LIABILITY COMPANY

GRANTOR'S MAILING ADDRESS: 528A W Berry Ave, Chicago, IL 60657

GRANTEE: CTEX, LLC

GRANTEE'S MAILING ADDRESS: 2966 Hacienda Way, Waco, Texas 76706

CONSIDERATION: Ten and no/100 Dollars (\$10.00) and other good and valuable cash consideration and Deed of Trust, dated January 29, 2021 executed by CTEX, LLC, to Ben R. Novosad, Trustee, for the benefit of Capital Farm Credit, ACA, as agent/nominee, securing the payment of one note in the principal sum of \$700,000.00, therein described, which deed of trust was filed for record in the office of the County Clerk of McLennan County, Texas.

PROPERTY (Including any improvements): Being the property more particularly described in Exhibit A attached hereto and made a part hereof for all purposes.

RESERVATION FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

Subject, however, to any and all restrictions, covenants, easements and outstanding mineral interests, if any of record in the County Clerk's Office of said county and now in effect.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

CAPITAL FARM CREDIT, ACA, as agent/nominee at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of CAPITAL FARM CREDIT, ACA as agent/nominee and are transferred to CAPITAL FARM CREDIT, ACA as agent/ nominee without recourse against Grantor.

When the context requires, singular nouns and pronouns include the plural.

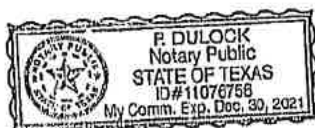
HERSH PROPERTIES, LTD.,
A TEXAS LIMITED PARTNERSHIP

By: HERSH FAMILY, LLC, A TEXAS
LIMITED LIABILITY COMPANY, General Partner

By: Judith Hersh
JUDITH HERSH, Member

STATE OF Texas
COUNTY OF McLennan

This instrument was acknowledged before me on the 29th day of Jan, 2020, by JUDITH HERSH, Member of HERSH FAMILY, LLC, A TEXAS LIMITED LIABILITY COMPANY, GENERAL PARTNER OF HERSH PROPERTIES, LTD., A TEXAS LIMITED PARTNERSHIP, on behalf of said entities.



[Signature]
Notary Public, State of Texas

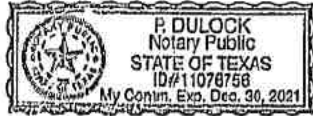
JUSTIN LAND LLC, A TEXAS LIMITED
LIABILITY COMPANY

By: Sue Hansen
SUE HANSEN, Manager

STATE OF Texas
COUNTY OF McLennan

This instrument was acknowledged before me on the 24th day of Jan, 2020, by SUE HANSEN,
Manager of JUSTIN LAND LLC, A TEXAS LIMITED LIABILITY COMPANY, on behalf of said entity.

P. Dulock
Notary Public, State of Texas



AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:
Gary D. Tully, P.C.
8300 Old McGregor Road, Ste. 1A
Woodway, Texas 76712

EXHIBIT "A"**Tract 1:**

BEING A 318.755 ACRE TRACT OF LAND SITUATED IN THE IGNACIO GALINDO SURVEY, ABSTRACT NO. 16, MCLENNAN COUNTY, TEXAS, AND BEING A PORTION OF THE REMAINDER OF THAT CALLED 741.272 ACRE, SAVE & EXCEPT 246.45 ACRE, TRACT OF LAND DESCRIBED IN DEED TO JUSTIN LAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, AS RECORDED IN MCC NO. 2019012858 OF THE OFFICIAL PUBLIC RECORDS OF MCLENNAN COUNTY, TEXAS (O.P.R.M.C.T.); SAID 318.755 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod found lying at the intersection of Steiner Road and Frances Road, both gravel roads having an apparent 40 foot wide prescriptive Right of Way (ROW), being the westerly common corner of said 741.272 and that called 389.27 acre tract of land described in deed to Donald F. Holy and wife, Mary Ann Holy, as recorded in MCC File No. 2004043041 of said O.P.R.M.C.T., and the easterly common corner of that called 441.86 acre tract of land described in deed as "Tract Five" to the RG-EGB 2012 Trust & Esmeralda Gonzales Baker as recorded in MCC File No. 2016031441 of said O.P.R.M.C.T. and the remainder of that called 348.59 acre tract of land described in deed as "Tract 1" to Justin Land, LTD, as recorded in MCC File No. 2011029606 and converted to Justin Land, LLC, as recorded in MCC File No. 2012012420 of said O.P.R.M.C.T.;

THENCE along the centerline of said Frances Road, being the south lines of said 741.272 acre tract and the northeast lines of said Tract 1, the following two (2) courses and distances:

- 1) S 88° 54' 14" W, a distance of 1,005.56 feet, to a point;**
- 2) N 29° 55' 06" W (record call is N 27° 36' 21" W - 1,432.48 feet), a distance of 1,435.89 feet, to a 1/2 inch iron rod found, being the northerly common corner of said 741.272 acre tract and the remainder of said Tract 1, for the POINT OF BEGINNING and the east corner of the herein described tract;**

THENCE S 78° 07' 44" W, leaving said Frances Road and along the south lines of said 741.272 acre tract, being the north line of the remainder of said Tract 1, a distance of 484.79 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for an angle point hereof;

THENCE S 60° 03' 08" W (record call is S 62° 00' 16" W - 3,307.09 feet), along the south line of said 741.272 acre tract and the northwest line of said Tract 1, passing at a distance of 1,647.74 feet, a point being the northerly common corner of that called 150.00 acre tract of land described in deed to Transit Mix Concrete and Materials Company as recorded in Volume 1790, Page 759 of the Deed Records of McLennan County, Texas (D.R.M.C.T.) and the remainder of said Tract 1, from which a 3/8 inch iron rod found lying in the aforesaid Steiner Road, being the southerly common corner of said 150.00 and remainder of Tract 1 tracts bears S 29° 04' 14" E, a distance of 2,382.15 feet (record call is S 26° 55' 00" E - 2,376.82 feet), and continuing along the south line of said 741.272 acre tract and the northwest line of said 150.00 acre tract, for a total distance of 3,307.15 feet, to a point, being the southerly common corner of said 741.272 acre tract and that called 85.64 acre tract of land described in deed as "Third Tract" to H. F. Redding and wife, Sherry Redding, as recorded in MCC File No. 2010008286 of said O.P.R.M.C.T. for the south corner hereof. From which, a 3/8 inch iron rod found at the base of an 8" treated fence post, being the common west corner of said 150.00 acres and Tract 1 bears S 60° 03' 08" W, a distance of 2,853.76 feet (record call for the northwest line of said 150.00 acre tract is S 62° 16' 08" E, a total distance of 4,513.17 feet);

THENCE N 31° 21' 56" W (record call is N 29° 22' 13" W), along the southwest line of said 741.272 acre tract and the northeast line of said Third Tract, a distance of 2,767.73 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" near the base of a 7 inch treated wood post on the north bank of Castleman Creek for the west corner hereof, and being the south

2021004053 02/01/2021 02:36:54 PM Page 4 of 7
corner of that called 246.45 acre tract of land described in deed to Raymond Holy Jr. and spouse, Dolores Jane Holy, as recorded in MCC File No. 2017009961 of said O.P.R.M.C.T.;

THENCE along the southeast lines of said 246.45 acre tract, being the common northwest lines of the remainder of said 741.272 acre tract, the following nine (9) courses and distances:

- 1) N 47° 21' 19" E, a distance of 161.61 feet, to a point for corner;
- 2) N 31° 35' 05" E, a distance of 160.33 feet, to a point for corner;
- 3) N 02° 12' 08" W, a distance of 211.04 feet, to a point for corner;
- 4) N 05° 19' 34" E, a distance of 103.68 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for corner;
- 5) N 15° 43' 20" E, a distance of 528.29 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for corner;
- 6) N 38° 15' 04" E, a distance of 311.46 feet, to a point for corner;
- 7) N 44° 21' 19" E, a distance of 506.71 feet, to a point for corner, from which an existing 7 inch treated wood fence post bears S 22° 52' 39" E, a distance of 1.4 feet;
- 8) N 45° 30' 10" E, a distance of 549.61 feet, to a point for corner, from which an existing 7 inch treated wood fence post bears S 05° 00' 14" E, a distance of 0.5 feet;
- 9) N 60° 53' 31" E, a distance of 1,426.83 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y", being an interior "ell" corner of said 246.45 acre tract, lying in the southwest line of that called 0.58 acre tract of land described in the Right of Way dedication to McLennan County and the Public as recorded in MCC File No. 2007009238 of said O.P.R.M.C.T., and also lying on the south side of the aforesaid Frances Road for an exterior "ell" corner hereof. From which, a 1/2 inch iron rod found on the north side of said road, being the northwest corner of said 0.58 acre tract and an interior "ell" corner of said 246.45 acre tract bears N 30° 42' 36" W, a distance of 54.56 feet;

THENCE along the south lines of said 0.58 acre tract and Frances Road (variable width ROW at this point), being the northwest line of the remainder of said 741.272 acre tract, the following five (5) courses and distances:

- 1) S 30° 42' 36" E, a distance of 5.47 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for an interior "ell" corner hereof, being the westerly south corner of said 0.58 acre tract;
- 2) N 59° 17' 24" E, a distance of 146.31 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for the beginning of a non-tangent curve to the right, having a central angle of 90° 24' 56", a radius of 30.00 feet, and having a chord bearing S 75° 30' 03" E, a chord distance of 42.58 feet, for the northernmost corner hereof;
- 3) Southeasterly along said non-tangent curve to the right, an arc distance of 47.34 feet, to a point at the end of said curve for corner and lying in the north bank of said Castleman Creek;
- 4) S 30° 17' 28" E, crossing said creek, a distance of 66.84 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for an interior "ell" corner hereof, being the easterly south corner of said 0.58 acre tract;
- 5) N 61° 08' 02" E, a distance of 35.00 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" lying in the centerline of said Frances Road for an exterior "ell"

THENCE S 30° 44' 02" E, leaving said common line, over and across said 741.272 acre tract and generally along the centerline of said Frances Road (apparent 40 foot wide prescriptive ROW at this point), a distance of 3,939.29 feet, to the POINT OF BEGINNING and containing 318.755 acres, more or less.

The bearings shown hereon are grid bearings and based on GPS observations, utilizing the Texas Coordinate System, Central Zone 4203, NAD 83/2011. All distances and areas shown are in surface coordinates and U.S. Survey Feet.

Tract 2:

BEING A 175.210 ACRE TRACT OF LAND SITUATED IN THE IGNACIO GALINDO SURVEY, ABSTRACT NO. 16, MCLENNAN COUNTY, TEXAS, AND BEING A PORTION OF THE REMAINDER OF THAT CALLED 741.272 ACRE, SAVE & EXCEPT 246.45 ACRE, TRACT OF LAND DESCRIBED IN DEED TO JUSTIN LAND, LLC, A TEXAS LIMITED LIABILITY COMPANY, AS RECORDED IN MCC NO. 2019012858 OF THE OFFICIAL PUBLIC RECORDS OF MCLENNAN COUNTY, TEXAS (O.P.R.M.C.T.); SAID 175.210 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 3/8 inch iron rod found lying in the centerline of Steiner Road, a gravel road having an apparent 40 foot wide prescriptive Right of Way (ROW), being the east corner of said 741.272 acre tract, the south corner of that called 2,558.992 acre tract of land described in deed to Marecek Land & Cattle, LLC, as recorded in MCC File No. 2012039763 of said O.P.R.M.C.T. and lying in the northwest line of that called 389.27 acre tract of land described in deed to Donald F. Holy and wife, Mary Ann Holy, as recorded in MCC File No. 2004043041 of said O.P.R.M.C.T. for the POINT OF BEGINNING and the east corner of the herein described tract. From which a 3/8 inch iron rod found (leaning) in the centerline of said road, being the common line of said 2558.992 and 389.27 acre tracts bears N 61° 10' 57" E, a distance of 1,987.51 feet;

THENCE along the centerline of said Steiner Road, being the southwest line of said 741.272 acre tract and the northwest line of said 389.27 acre tract, the following two (2) courses and distances:

- 1) S 57° 18' 48" W, a distance of 81.83 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for corner;**
- 2) S 49° 19' 53" W, a distance of 1,330.04 feet, to a 1/2 inch iron rod found at the intersection of said Steiner Road and another gravel road having an apparent 40 foot wide prescriptive ROW, called Frances Road to the north and Renner Road to the south, being the westerly common corner of said 741.272 and 389.27 acre tracts, and the easterly common corner of that called 441.86 acre tract of land described in deed as "Tract Five" to the RG-EGB 2012 Trust & Esmeralda Gonzales Baker as recorded in MCC File No. 2016031441 of said O.P.R.M.C.T. and the remainder of that called 348.59 acre tract of land described in deed as "Tract 1" to Justin Land, LTD, as recorded in MCC File No. 2011029606 and converted to Justin Land, LLC, as recorded in MCC File No. 2012012420 of said O.P.R.M.C.T. for the easterly south corner hereof;**

THENCE along the centerline of said Frances Road, being the south lines of said 741.272 acre tract and the northeast lines of said Tract 1, the following two (2) courses and distances:

- 1) S 88° 54' 14" W, a distance of 1,005.56 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for the westerly south corner hereof;**
- 2) N 29° 55' 06" W (record call is N 27° 36' 21" W - 1,432.48 feet), a distance of 1,435.89 feet, to a 1/2 inch iron rod found, being the northerly common corner of said 741.272 acre tract and the remainder of said Tract 1, for corner;**

2021004053 02/01/2021 02:36:54 PM Page 6 of 7
THENCE N 30° 44' 02" W, leaving said common line, over and across said 741.272 acre tract and continuing along the centerline of said Frances Road, a distance of 3,939.29 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for the southerly west corner hereof, and lying in the southeast line of that called 0.58 acre tract of land described in the Right of Way dedication to McLennan County and the Public as recorded in MCC File No. 2007009238 of said O.P.R.M.C.T.;

THENCE leaving said road and along the east lines of said 0.58 acre tract, being the northwest line of the remainder of said 741.272 acre tract, the following two (2) courses and distances:

- 1) N 61° 08' 02" E, a distance of 35.00 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" near the south bank of Castleman Creek for an interior "ell" corner hereof, being the east corner of said 0.58 acre tract;
- 2) N 30° 17' 28" W, crossing said creek, a distance of 87.28 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" for the northerly west corner hereof, being an exterior corner of that called 246.45 acre tract of land described in deed to Raymond Holy Jr. and spouse, Dolores Jane Holy, as recorded in MCC File No. 2017009961 of said O.P.R.M.C.T.. From which, a 1/2 inch capped iron rod found stamped "RPLS 3879", being a common corner of said 0.58 and 246.45 acre tracts, bears N 30° 17' 28" W, a distance of 18.95 feet;

THENCE N 61° 22' 00" E, along the southeast line of said 246.45 acre tract, being the northwest line of the remainder of said 741.272 acre tract, a distance of 1,123.41 feet, to a 5/8 inch capped iron rod set and stamped "CP&Y" near the north bank of Castleman Creek for the north corner hereof, being an interior "ell" corner of said 246.45 acre tract;

THENCE S 30° 00' 23" E (record call is S 28° 00' 37" E - 3,799.22 feet), along the southeast line of said 246.45 acre tract, passing at a distance of 39.4 feet a point in Castleman Creek being the westerly common corner of said 246.45 and 2,558.992 acre tracts and lying in the northeast line of said 741.272 acre tract, and continuing along the northeast line of said 741.272 acre tract and the southwest line of said 2,558.992 acre tract, for a total distance of 3,837.75 feet, to a 3/4 inch iron pipe found, being a common corner of said 741.272 and 2,558.992 acre tracts, for an angle point hereof;

THENCE S 62° 19' 00" E (record call is S 60° 24' 43" E - 2,173.02 feet), continuing along the common line of said 741.272 and 2,558.992 acre tracts a distance of 2,168.80 feet, to the POINT OF BEGINNING and containing 175.210 acres, more or less.

The bearings shown hereon are grid bearings and based on GPS observations, utilizing the Texas Coordinate System, Central Zone 4203, NAD 83/2011. All distances and areas shown are in surface coordinates and U.S. Survey Feet.

FILED AND RECORDED

Instrument Number: 2021004053

Filing and Recording Date: 02/01/2021 02:36:54 PM Pages: 7 Recording Fee: \$36.00

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of McLennan County, Texas.



J. A. "Andy" Harwell, County Clerk
McLennan County, Texas

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Satin

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 §
COUNTY OF FALLS §

Grant:

NOW THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, GLEN MARECEK and MARY MARECEK ("Grantors") have granted, sold and conveyed and by these presents do grant, sell and convey unto CTEX, LLC, a Texas limited liability company/limited partnership ("Grantee"), whose mailing address is 2966 Hacienda Wesley Rd., Waco, Texas 76706, all of Grantors' right, title and interest in and to the following properties:

Tract One: 1108.16 acres of land, a part of the Juan J. Acosta and Wm. Peterson conflicting grants, Falls County, Texas, more fully described in Exhibit A, attached hereto; and

Tract Two: Lots Five (5), Six (6), Seven (7) and Eight (8) in Block Eighteen (18) in the Town of Satin, Falls County, Texas, as shown on Map of Satin dated March 15, 1921, recorded in Volume 110, Page 701, Deed Records of Falls County, Texas; and

Grantors to convey and/or transfer all water rights owned, including but not limited to the Brazos River Authority and/or any other entity involved in ground water or pumping from the Brazos River.

Together with all rights, easements and appurtenances belonging or in anywise appertaining thereto, and all buildings and improvements situated thereon.

Grantee's interest is subject expressly to all zoning laws, ordinances, covenants, conditions, restrictions, rights-of-way, easements and rights now existing under any surface leases and oil and gas leases and all royalties, overriding royalties and other burdens presently of record covering and affecting the interests herein conveyed.

Exceptions to Conveyance and Warranty:

1. Easement from W. T. Helbert to C. M. Sparkman, dated February 20, 1967, recorded in Volume 265, Page 21, Deed Records of Falls County, Texas.
2. Agreed Judgment in Cause Number 2992 I the County Court of Falls County, Texas, dated July 13, 1971, between Lone Star Gas Company vs W. T. Helbert and wife, Berma Helbert, et al, recorded in Volume 285, Page 197, Deed Records of Falls County, Texas, for the purpose of condemning an easement.
3. Notice of Non-Compliance from the Texas Railroad Commission to W. T. Helbert, dated March 17, 2003, recorded in Volume 144, Page 196, Official Public Records of Falls County, Texas.
4. Permit to Appropriate State Water filed July 22, 1997, recorded in Volume 77, Page 526, Official Records of Falls County, Texas.
5. Subject to the portion of said property located in County Road 415A as shown on survey plat prepared by Don Randall Hughes, RPLS No. 5345 on August 18, 2018.
6. Subject to a Farm Lease beginning August 1, 2017 and ending the 31st day of July 2022, for a term of 5 years.

To have and to hold the Property unto Grantee, its heirs, personal representatives, successors and assigns forever; and Grantors do hereby bind themselves and their heirs, personal representatives, successors and assigns to warrant and forever defend the Property unto Grantee, its heirs, personal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantors, but not otherwise. This Special Warranty Deed is made with full rights of substitution and subrogation of Grantee, in and to all covenants and warranties of title heretofore given or made by others with respect to the property, or any part thereof, and Grantors hereby transfer and convey to Grantee all Grantors' rights under any and all such covenants and warranties of title that Grantors are entitled to enforce.

[Remainder of page intentionally left blank. Signature page to follow.]

EXECUTED on the date acknowledged below, to be effective for all purposes as of the same date.

GRANTORS:

Glen Marecek
GLEN MARECEK

Mary Marecek
MARY MARECEK

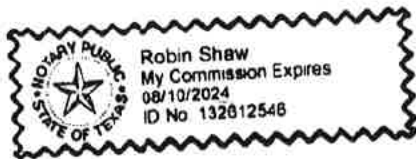
STATE OF TEXAS

§
§
§

COUNTY OF MIDLAND

This instrument was acknowledged before me on this *Jan* day of *January* 2021 by Glen Marecek and Mary Marecek.

Notary Seal:



[Signature]
Notary Public, the State of Texas

STATE OF TEXAS COUNTY OF FALLS
I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page in Official Public Records of Falls County Falls County Jan 15, 2021 at 02:36P


Attachment F

**THE STATE OF TEXAS
COUNTY OF McLennan**

Letter of Consent to Use Groundwater/Consent to Irrigate:

This letter is to certify that CTEX, LLC, does hereby give consent to Marecek Land & Cattle, LLC use of Brazos Alluvium Aquifer groundwater located on the property owned by CTEX, LLC, identified in the Warranty Deed With Vendor's Lien, "Exhibit A," as filed and recorded at the McLennan County Clerk's Office on 2/1/2021 (Instrument # 2021004053). CTEX, LLC agrees to give Marecek Land & Cattle, LLC consent install and operate pumps as needed and consent to convey said groundwater across any land identified in the aforementioned deed. CTEX, LLC also gives Marecek Land & Cattle, LLC consent to irrigate on any land owned by CTEX, LLC in the aforementioned deed.

This agreement shall remain effective for the duration of the time CTEX, LLC owns the property listed above.



Glen Marecek for CTEX, LLC

2-26-21

Date



Mary Marecek for CTEX, LLC

2-26-21

Date



Glen Marecek for Marecek Land & Cattle, LLC

2-26-21

Date



Mary Marecek for Marecek Land & Cattle, LLC

2-26-21

Date



Office of the Secretary of State

CERTIFICATE OF FILING OF

CTEX, LLC
File Number: 803186844

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 12/12/2018

Effective: 12/12/2018



A handwritten signature in black ink, appearing to read "R. Pablos".

Rolando B. Pablos
Secretary of State

**CERTIFICATE OF FORMATION
OF
CTEX, LLC**

FILED
In the Office of the
Secretary of State of Texas
DEC 12 2018
Corporations Section

1. The name of the limited liability company is CTEX, LLC (the "Company"), and the address of the principal office of the Company where records are to be kept or made available is 2966 Hacienda Wesley Rd., Waco, Texas 76706.

2. The name of the registered agent of the Company is Glen Marecek, an individual resident of the State of Texas, whose business address is 2966 Hacienda Wesley Rd., Waco, Texas 76706.

3. The registered office of the Company is 2966 Hacienda Wesley Rd., Waco, Texas 76706.

4. The name of the organizer of the Company is Glen Marecek, whose mailing address is 2966 Hacienda Wesley Rd., Waco, Texas 76706.

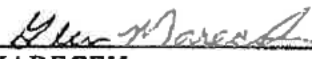
5. The purpose of the Company is to engage in any business, activity or any other lawful purpose of a limited liability company under Texas law.

6. The number of initial Managers of the Company is two (2). The names and mailing addresses of the initial Managers of the Company are as follows:

<u>Name</u>	<u>Mailing Address</u>
GLEN MARECEK	2966 Hacienda Wesley Rd. Waco, Texas 76706
MARY MARECEK	2966 Hacienda Wesley Rd. Waco, Texas 76706

EXECUTED to be effective this 10 day of December, 2018.

ORGANIZER:



GLEN MARECEK

Attachment G

Marshall Criteria

a. This application meets the administrative code requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 TAC Ch. 281, 295, and 297.

b. The specific proposed use of water in this amendment application is for agricultural crop irrigation. Beneficial use is defined in TWC §11.002 #4 as, "...use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water (TWC§11.002 #4)."

For agricultural crop irrigation, the submitted application meets the following criteria outlined in TWC Section 11 as beneficial use: TWC §11.023 #2 clearly identifies agricultural use as a purpose for which water may be, "appropriated, stored or diverted," if the water has not been set aside, or needed to meet freshwater and downstream instream flow needs (TWC §11.023 #2). Agricultural use is defined in TWC §11.002 #12 (A) as, "cultivating the soil to produce crops for human food, animal feed...", which is the applicant's proposed purposes (TWC §11.002 #12 A).

c. No detrimental effects are anticipated to public welfare, including the well-being of humans and the environment, as a result of the proposed amendment.

d. No effects are anticipated as a result of the proposed amendment on groundwater or groundwater recharge.

e. Applicant Marecek Land & Cattle, LLC, are located within the Region G Planning Group (Brazos). The proposed amendment addresses a water supply need that is consistent with state and regional water plan management strategies pertaining to irrigation.

Conservation practices are implemented to reduce evaporation and eliminate runoff during times when the irrigation systems are run. The irrigation systems used are typically operated in the early morning or late evening hours when the temperature is lower to reduce evaporation. Irrigation is closely monitored on site and the systems are shut down when or before the soil reaches its water holding capacity. This conservation practice prevents over-watering of the field and eliminates wasteful runoff.

Brush/weed control is also practiced to aid in water conservation. Weeds and invasive species are killed or removed to reduce unwanted water consumption, thus leaving more irrigation water in the soil to be utilized by the production crop as intended.

Land leveling is also utilized on cultivated land to increase water infiltration into the soil and eliminate water runoff when irrigating.

*Conservation/management strategies (BMPs) can be located in the 2021 Brazos G Regional Water Plan Volume II-Irrigation Water Conservation Section-pgs. 2-24 & 12-25.

f. A Water Conservation is attached (Attachment H). A Drought Contingency Plan is not required with this application.

g. The proposed Bed & Banks/Amendment Application adds diversion reaches and irrigable acreage for the water allotted in the surface and groundwater permits. The changes do not include any new appropriations, changes to the amount, diversion rate, etc... As a result of the proposed amendment, no impact on water right holders or the environment is anticipated.



Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-2214

System Inventory and Water Conservation Plan for Individually-Operated Irrigation Systems

This form is provided to assist entities in developing a water conservation plan for individually-operated irrigation systems. If you need assistance in completing this form or in developing your plan, please contact the Conservation staff of the Resource Protection Team in the Water Availability Division at (512) 239-4691.

Additional resources such as best management practices (BMPs) are available on the Texas Water Development Board's website <http://www.twdb.texas.gov/conservation/BMPs/index.asp>. The practices are broken out into sectors such as Agriculture, Commercial and Institutional, Industrial, Municipal and Wholesale. BMPs are voluntary measures that water users use to develop the required components of Title 30, Texas Administrative Code, Chapter 288. BMPs can also be implemented in addition to the rule requirements to achieve water conservation goals.

Contact Information

Name: Marecek Land & Cattle, LLC

Address: 2966 Hacienda Wesley, Waco, TX 76706-7468

Telephone Number: 432-634-2337 Fax: ()

Form Completed By: Richard George

Title: Applicant Consultant

Signature: *Richard George* Date: 2/24/21

A water conservation plan for agriculture use (individual irrigation user) must include the following requirements (as detailed in 30 TAC Section 288.4). If the plan does not provide information for each requirement, you must include in the plan an explanation of why the requirement is not applicable.

I. BACKGROUND DATA

A. Water Use

- Annual diversion appropriated or requested (in acre-feet): 2399.24
- In the table below, list the amount of water (in acre-feet) that is or will be diverted monthly for irrigation during the year. Actual totals may vary monthly depending on weather conditions (i.e. heat, precipitation, wind, etc...) not to exceed 2399.24 acre-feet annually.

January	February	March	April
<u>99.905</u>	<u>99.905</u>	<u>99.905</u>	<u>99.905</u>
May	June	July	August
<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>
September	October	November	December
<u>99.905</u>	<u>99.905</u>	<u>99.905</u>	<u>99.905</u>
Total All Months			<u>2399.24</u>

- In the table below, list the type of crop(s), growing season, and acres irrigated per year.

<u>Type of crop</u>	<u>Growing Season (Months)</u>	<u>Acres irrigated/year</u>
<u>Corn</u>	<u>March-August</u>	<u>1,560.16</u>
<u>Cotton</u>	<u>March-November</u>	<u>2,105.225</u>
<u>Coastal Bermuda</u>	<u>April-September</u>	<u>212.128</u> <u>↓(Same Acres)↓</u>
<u>Wheat/Rye</u>	<u>September-April</u>	<u>260.0</u>
Total acres irrigated		<u>3,925.385</u>

- Are crops rotated seasonally or annually? Yes No

If yes, please describe: Corn and cotton are rotated annually.

- Describe soil type (including permeability characteristics, if applicable).

The dominant soil types include clay, silty clay and silt loam soils.

B. Irrigation system information

- Describe the existing irrigation method or system and associated equipment including pumps, flow rates, plans, and/or sketches of system the layout. Include the rate (in gallons per minute or cubic feet per second) that water is diverted from the source of supply. If this WCP is submitted as part of a water right application, verify that the diversion volumes and rates are consistent with those in the application.

Multiple delivery systems are available for use across the land proposed to be irrigated. These include (3) T&L center pivots, (3) Valley center pivots, (5) Zimmatic center pivots & a traveling big gun for non-pivot field areas. Water is pumped to the pivots/big gun via portable pumps (7) Berkley/Conley/Cat/John Deere pumps are available ranging from 900-2500 GPM output. Water is transported from the pumps to the irrigation equipment via sealed pvc/poly pipelines.

2. Describe the device(s) and/or method(s) used to measure and account for the amount of water diverted from the supply source, and verify the accuracy is within plus or minus 5%.

Flowmeters are used on each diversion pump (Brands include Geyser & McCrometer & have an accuracy rating of +/- 2%.

3. Provide specific, quantified 5-year and 10-year targets for water savings including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan below in 3(a) and 3(b). Water savings may be represented in acre-feet or in water use efficiency. If you are not planning to change your irrigation system in the next five or ten years, then you may use your existing efficiencies or savings as your 5-year and /or 10-year goals. Please provide an explanation in the space provided below if you plan to use your existing efficiencies or savings.

Available irrigation equipment ranges in age and efficiency rating. As the older equipment becomes obsolete, it will be replaced with newer high efficiency LEPA delivery methods in an effort to further conserve water.

Quantified 5-year and 10-year targets for water savings:

- a. 5-year goal:
Savings in acre-feet or system efficiency as a percentage 80 %
- b. 10-year goal:
Savings in acre-feet or system efficiency as a percentage 85 %

(Examples of Typical Efficiencies for Various Types of Irrigation Systems - Surface: 50-80%; Sprinkler: 70-85%; LEPA: 80-90%; Micro-irrigation: 85-95%)

4. If there is an existing irrigation system, have any system evaluations been performed on the efficiency of the system?

Yes No

If yes, please provide the date of the evaluation, evaluator's name and the results of the evaluation:

C. Conservation practices

1. Describe any water conserving irrigation equipment, application system or method in the irrigation system (e.g., surge irrigation, low pressure sprinkler, drip irrigation, nonleaking pipe).

Water is pumped through the systems through sealed non-leaking pipe and several of the center pivots are fitted with low pressure sprinkler nozzles. The irrigation systems are run during optimal weather conditions such as low wind, early morning, or late evening to avoid high losses due to evaporation.

2. Describe any methods that will be used for water loss control and leak detection and repair.

Irrigation equipment is routinely monitored during operation for maximum operating efficiency and inspected for leaks. Repairs are promptly made when necessary to avoid any water loss and increase conservation.

3. Describe any water-saving scheduling or practices to be used in the application of water (e.g., irrigation only in early morning, late evening or night hours and/or during lower temperatures and winds) and methods to measure the amount of water applied (e.g. soil-moisture monitoring).

The irrigation systems are run during optimal weather conditions such as low wind, early morning, or late evening to avoid high losses due to evaporation.

4. Describe any water-saving land improvements or plans to be incorporated into the irrigation practices for retaining or reducing runoff and increasing infiltration of rain and irrigation water (e.g., land leveling, conservation tillage, furrow diking, weed control, terracing, etc.).

Weed control practices are implemented throughout the year to rid out weeds and unwanted/invasive plants. Cultivated land has also been leveled to increase the water infiltration rate into the soil and eliminate runoff.

5. Describe any methods for recovery and reuse of tail water runoff.

Fields are monitored during irrigation and not watered enough to create tail water runoff.

6. Describe any other water conservation practices, methods, or techniques for preventing waste and achieving conservation.

All irrigation is closely monitored and any leaks/malfunctions which lead to water loss are repaired as soon as possible to achieve water conservation.

II. WATER CONSERVATION PLANS SUBMITTED WITH A WATER RIGHT APPLICATION FOR NEW OR ADDITIONAL STATE WATER N/A

Water Conservation Plans submitted with a water right application for New or Additional State Water must include data and information which:

1. support the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
2. evaluates conservation as an alternative to the proposed appropriation; and
3. evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

Additionally, it shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

Attachment I

Note: Due to these being diversion reaches, the photos below are in the middle sections of the diversion reach listed and are typical of the banks/vegetation of the entire reach(es) listed.

Castleman Creek (Unnamed Tributary is identical) (Reaches 1 & 2)



Picture #1 (Castleman Creek Facing Upstream)



Picture #2 (Castleman Creek Facing Downstream)

Brazos River (Reaches 3, 4 & 5)



Picture #3 (Brazos River Facing Upstream)



Picture #4 (Brazos River Facing Downstream)



Picture #5 (Brazos River Facing Upstream)



Picture #6 (Brazos River Facing Downstream)



Picture #7 (Brazos River Facing Upstream)



Picture #8 (Brazos River Facing Downstream)



Picture #9 (Brazos River Facing Upstream)



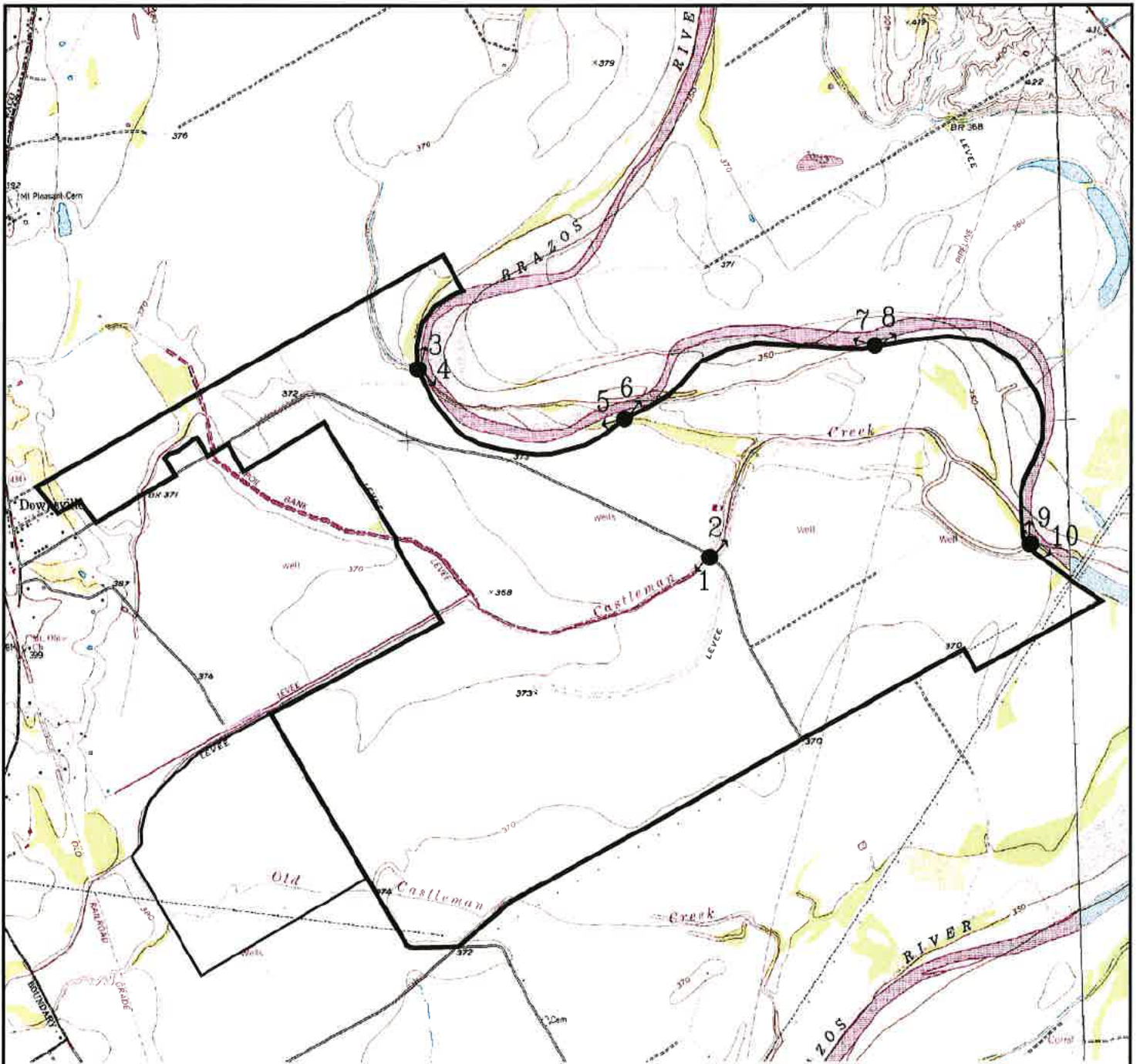
Picture #10 (Brazos River Facing Downstream)



Picture #11 (Brazos River Facing Upstream)



Picture #12 (Brazos River Facing Downstream)



LEGEND:

- Denotes Property Boundary
- Denotes Photo Direction
- Denotes Photo Location

Map Generated 2/24/2021



SCALED AS SHOWN

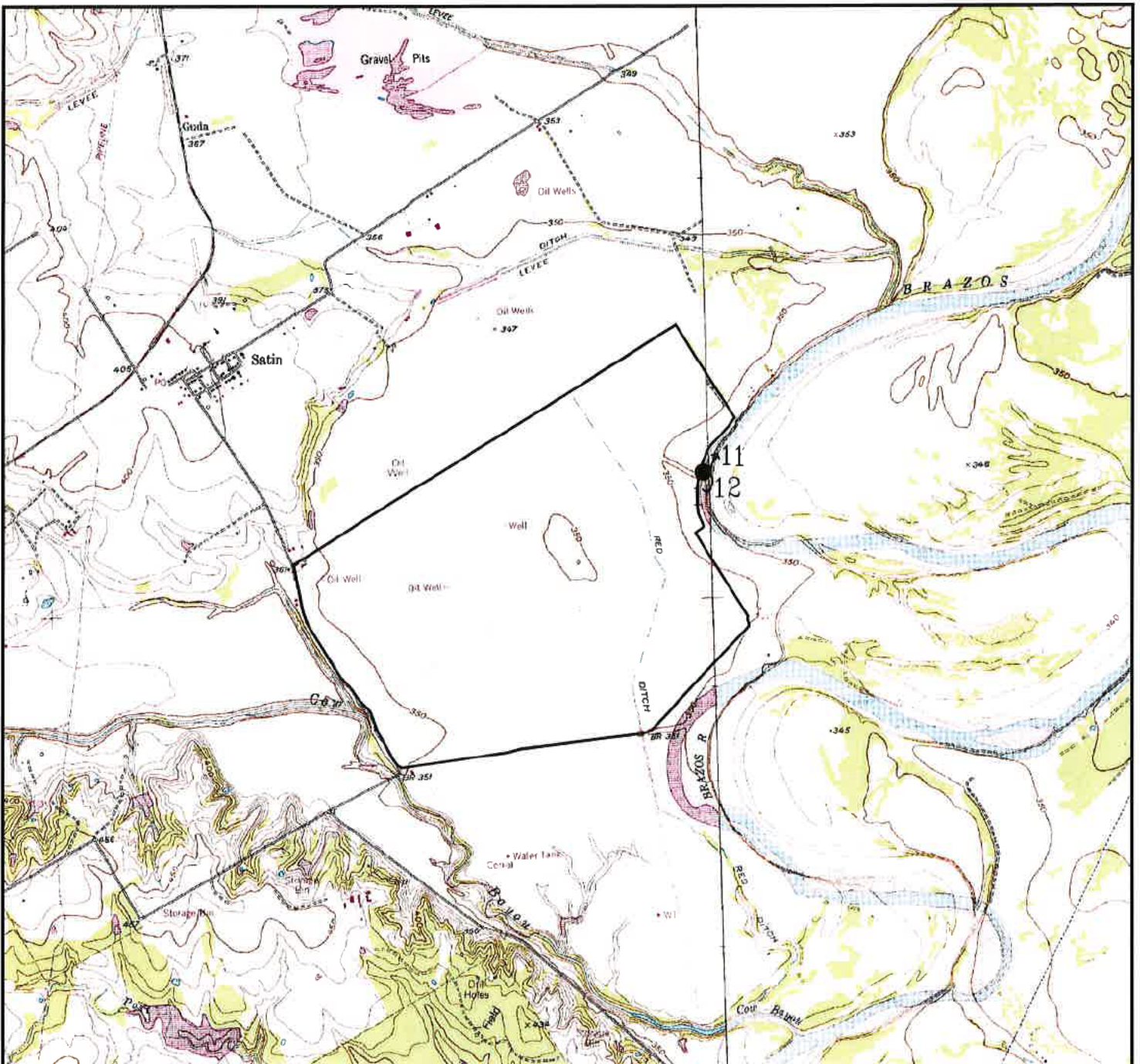
Source: USDA-NRCS. Geospatial Data Gateway. Available at:
<http://datagateway.nrcs.usda.gov/>. Digital Raster
 Graphic County Mosaic by NRCS - Accessed April, 2015.

Glen & Mary Marecek
 McLennan County
 Waco, TX 76706

Attachment I
 Photo Map 1
 McLennan County Property



Enviro-Ag Engineering, Inc.
 ENGINEERING CONSULTANTS
 3404 Airway Blvd.
 AMARILLO, TEXAS 79118
 TEL (806) 353-6123 FAX (806) 353-4132



Map Generated 2/24/2021

LEGEND:

- Denotes Property Boundary
- Denotes Photo Direction
- Denotes Photo Location



SCALED AS SHOWN

Source: USDA-NRCS. Geospatial Data Gateway. Available at: <http://datagateway.nrcs.usda.gov/>. Digital Raster Graphic County Mosaic by NRCS - Accessed April, 2015.

Glen & Mary Marecek
McLennan County
Waco, TX 76706

Attachment I
Photo Map 2
Falls County Property



Enviro-Ag Engineering, Inc.
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3404 Airway Blvd.
AMARILLO, TEXAS 79118
TEL (806) 353-6123 FAX (806) 353-4132

20-365-4033

REPORT DATE
Dec 30, 2020
 RECEIVED DATE
Dec 22, 2020

SEND TO
22923



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 www.midwestlabs.com

PAGE 1/4

ISSUE DATE
Dec 30, 2020

ENVIRO-AG ENGINEERING INC
ENVIRO-AG ENGINEERING INC
3404 AIRWAY BLVD
AMARILLO TX 79118

REPORT OF ANALYSIS
 For: (22923) ENVIRO-AG ENGINEERING INC
 Marecek
 WWW/Marecek/RG

Analysis	Level Found		Reporting		Analyst- Date	Verified- Date
	As Received	Units	Limit	Method		
Sample ID: Reclaimed Quarry, Pit 1	Lab Number: 8845187	Date Sampled: 2020-12-18	1445			
Total dissolved solids	544	mg/L	10	SM 2540 C-(1997)	wib1-2020/12/28	mgn8-2020/12/29
Chloride	117	mg/L	5	EPA 300.0	mgn8-2020/12/24	jdb5-2020/12/30
Sulfate	120	mg/L	5	EPA 300.0	mgn8-2020/12/24	jdb5-2020/12/30
Sample ID: Reclaimed Quarry, Pit 2	Lab Number: 8845188	Date Sampled: 2020-12-18	1500			
Total dissolved solids	350	mg/L	10	SM 2540 C-(1997)	wib1-2020/12/28	mgn8-2020/12/29
Chloride	48	mg/L	1	EPA 300.0	mgn8-2020/12/23	jdb5-2020/12/30
Sulfate	94	mg/L	5	EPA 300.0	mgn8-2020/12/24	jdb5-2020/12/30

All results are reported on an AS RECEIVED basis.

For questions please contact:

Rob Ferris
 Account Manager

402)829-9871

Attachment J

Field Tested pH
 Pit 1-7.85
 Pit 2-8.0

Temperature:
 Pit 1-19.6 C
 Pit 2-18.5 C

The result(s) issued on this report only reflect the analysis of the sample(s) submitted.
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ISSUE DATE

Dec 30, 2020

**ENVIRO-AG ENGINEERING INC
 ENVIRO-AG ENGINEERING INC
 3404 AIRWAY BLVD
 AMARILLO TX 79118**

REPORT OF ANALYSIS

For: (22923) ENVIRO-AG ENGINEERING INC

Marecek

WW/Marecek/RG

Detailed Method Description(s)

Total dissolved solids (TDS)

Sample analysis follows MWL ENV 015 which is based on Standard Methods (SM) 2540 C. S known volume of an aqueous sample is poured through a pre-weighed filter with a known pore-size. The aqueous sample is evaporated and heated to obtain a solid. The amount of solid material passing through the filter is reported as total dissolve solids (TDS)

EPA 300.0 ion chromatography

Analysis follows MWL ENV 001 which follows EPA 300.0. Aqueous samples or aqueous extracts are injected into the IC instrument where the ions are separated by a column. As the ions elute from the column, they are measured by a conductivity detector and reported.

The result(s) issued on this report only reflect the analysis of the sample(s) submitted.

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Sample Acceptance Checklist

Document Number: RC CHKLIST 001

Revision No.: 4

Effective Date: 1/31/2019

Page 1 of 1

Lab Number: _____

Thermometer Used: Therm Fisher IR 1

Cooler Intact: Yes No
 Received on Ice: Yes No
 Hand Delivered: Yes No

Sample Temperature (°C): 1.2°

Date & Initials of person accepting samples: AA 12/22/20 Comments

Chain of Custody present?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Sample ID(s):	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Sample Location(s):	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Client contact:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Analysis Requested:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Date & Time of collection:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Sampler name on COC?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Chain of custody relinquished with signature?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Chain of custody complete?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Sample labels match COC?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Written in indelible ink?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Labels indicate proper preservation?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Samples arrived within hold time?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Samples arrived within correct temperature?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Sufficient volume?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Appropriate containers used?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	
Filtered volume received for dissolved tests?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	
Headspace in VOA vials?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	
Trip Blank present?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	

Client Notification/Resolution: Date/Time Contacted: _____

Person Contacted: _____ Contacted By: _____

Comments/Resolution: _____

